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CRABB'S

COMPLETE SERIES

OF

PRECEDENTS IN CONVEYANCING

AND OF

Common and Commercial Forms

IN ALPHABETICAL ORDER,

ADAPTED TO THE PRESENT STATE OF THE LAW AND THE
PRACTICE OF CONVEYANCING;

WITH

**COPIOUS PREFACES, OBSERVATIONS AND NOTES
ON THE SEVERAL DEEDS.**

EDITED BY

J. T. CHRISTIE, ESQ.,

BARRISTER-AT-LAW.

THE FIFTH EDITION,

WITH NUMEROUS CORRECTIONS AND ADDITIONS,

BY

LEONARD SHELFORD, ESQ.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

IN TWO VOLUMES.

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THE Prefaces to this Edition have been carefully revised with reference to the great changes in the Law which have taken place of late years. In many instances it was found necessary or expedient to rewrite a considerable portion of the Prefaces. Such Forms in the last Edition of the Work as were considered obsolete or useless have been omitted. The Forms have been revised generally, and many new Forms have been introduced, so that this Edition contains a large portion of matter which is entirely new. An Index to the Prefaces, which was not contained in the last Edition, is added, and the Index to the Forms is enlarged. Upon the whole a confident expectation is entertained, that the practical usefulness of the Work to the general Practitioner and to the Student will be found to be considerably increased by the pains and labour which have been bestowed upon this Edition.

3, BRICK COURT, TEMPLE,
July, 1859.

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ADDENDA.

THE Act 22 & 23 Vict. c. 35, "To further amend the Law of Property and to relieve Trustees," was passed about one month after the following work was printed. As that act must be frequently referred to, and is intimately connected with a few of the subjects contained in the following work, it has been deemed advisable to prefix thereto the whole of the act, with references to those parts of the work which have relation to or are affected by the respective enactments.

THE STATUTE 22 & 23 VICT. c. 35.

An Act to further amend the Law of Property, and to relieve Trustees. [13th August, 1859.]

BE it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

Leases.

I. Where any licence to do any act which without such licence would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted or to be hereafter granted, shall at any time after the passing of this act be given to any lessee or his assigns, every such licence shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence); and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease or other matter not specifically authorized or made punishable by such licence in the same manner as if no such licence had been given; and the condition or right of re-entry shall be and remain in all respects as if such licence had

Restriction on effect of licence to alien.

not been given, except in respect of the particular matter authorized to be done (a).

Restricted
operation of
partial licences.

II. Where in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or underletting or doing any other specified act without licence, and a licence at any time after the passing of this act shall be given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without licence, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such licence.

Apportionment
of conditions of
re-entry in cer-
tain cases.

III. Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for nonpayment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Policies of Insurance.

Relief against
forfeiture for
breach of cove-
nant to insure
in certain
cases.

IV. A court of equity shall have power to relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire, where no loss or damage by fire has happened, and the breach has, in the opinion of the court, been committed through accident or mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure, upon such terms as to the court may seem fit.

When relief
granted the
same to be re-
corded.

V. The court, where relief shall be granted, shall direct a record of such relief having been granted to be made by endorsement on the lease or otherwise.

Court not to re-
lieve any per-

VI. The court shall not have power under this act to relieve the same person more than once in respect of the same covenant or con-

(a) See p. 1025, pl. 35 ; p. 1115, n. (b).

dition; nor shall it have power to grant any relief under this act where a forfeiture under the covenant in respect of which relief is sought shall have been already waived out of court in favour of the person seeking the relief. son more than once in respect of the same covenant, &c.

VII. The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relating to the building covenanted to be insured, effected by the lessee or mortgagor in respect of his interest under the lease or in the property, or by any person claiming under him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant. Lessor to have benefit of an informal insurance.

VIII. Where, on the *bonâ fide* purchase after the passing of this act of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser or any person claiming under him shall not be subject to any liability, by way of forfeiture or damages or otherwise, in respect of any breach of the covenant committed at any time before the completion of the purchase, of which the purchaser had not notice before the completion of the purchase; but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant. Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.

IX. The preceding provisions shall be applicable to leases for a term of years absolute, or determinable on a life or lives or otherwise, and also to a lease for the life of the lessee or the life or lives of any other person or persons. Preceding provisions to apply to leases for a term of years absolute, &c.

Rentcharges.

X. The release from a rentcharge of part of the hereditaments charged therewith shall not extinguish the whole rentcharge, but shall operate only to bar the right to recover any part of the rentcharge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release (*a*). Release of part of land charged not to be an extinguishment.

Judgments.

XI. The release from a judgment of part of any hereditaments charged therewith shall not affect the validity of the judgment as to Release of part of land charged not to affect judgment.

(*a*) See p. 227, n. (*a*); p. 1327, pl. 7.

the hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice nevertheless to the rights of all persons interested in the hereditaments or property remaining unreleased, and not concurring in or confirming the release.

Powers.

Mode of execution of powers.

XII. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity (*a*): provided always, that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument, and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.

Sale under power not to be avoided by reason of mistaken payment to tenant for life.

XIII. Where under a power of sale a *bonâ fide* sale shall be made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life or any other party to the transaction shall by mistake be allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles, it shall be lawful for the Court of Chancery, upon any bill or claim or application in a summary way, as the case may require or permit, to declare that upon payment by the purchaser, or the claimant under him, of the full value of the timber and articles at the time of sale, with such interest thereon as the court shall direct, and the settlement of the said principal moneys and interest under the direction of the court upon such parties as in the opinion of the court shall be entitled thereto, the said sale ought to be established; and upon such payment and settlement being made accordingly the court may declare that the said sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him (*b*).

(*a*) See p. 232, pl. 4.

(*b*) See *Cockerell v. Cholmeley*, 1 Russ. & M. 418.

XIV. Where by any will which shall come into operation after the passing of this act the testator shall have charged his real estate or any specific portion thereof with the payments of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy or money as aforesaid, by a sale and absolute disposition by public auction or private contract of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

Devisee in trust may raise money by sale, notwithstanding want of express power in the will.

XV. The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent or devise, or to any person or persons who may be appointed under any power in the will, or by the Court of Chancery, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.

Powers given by last section extended to survivors, devisees, &c.

XVI. If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any), shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested; but any sale or mortgage under this act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

Executors to have power of raising money, &c. where there is no sufficient devise.

XVII. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections fourteen, fifteen and sixteen of this act, or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Purchasers, &c. not bound to inquire as to powers.

XVIII. The provisions contained in sections fourteen, fifteen and sixteen shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made, under or in pursuance of any will coming into operation before the passing of this act, but the validity of any such sale or mortgage shall be ascertained and deter-

Sections 14, 15 and 16 not to affect certain sales, &c. nor to extend to devises in fee or in tail.

mined in all respects as if this act had not passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.

Inheritance.

Descent how
to be traced.

XIX. Where there shall be a total failure of heirs of the purchaser, or where any land shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the land shall descend and the descent shall thenceforth be traced from the person last entitled to the land as if he had been the purchaser thereof.

Preceding
section incor-
porated with

XX. The last preceding section shall be read as part of the act "For the Amendment of the Law of Inheritance," of the session of the third and fourth years of the reign of King William the Fourth, chapter one hundred and six (a).

Assignment of Personality.

Assignment
to self and
others.

XXI. Any person shall have power to assign personal property, now by law assignable, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another (b).

Purchasers.

After Dec. 31,
1859, provision
as to registry,
contained in
2 & 3 Vict.
c. 11, and 18 &
19 Vict. c. 15,
to apply to
crown debts.

XXII. From and after the thirty-first day of December, one thousand eight hundred and fifty-nine, the provisions for re-registry of judgments, decrees or orders, rules or orders, contained in the act of the session of the second and third years of Queen Victoria, chapter eleven, as explained and amended by the act of the session of the eighteenth and nineteenth years of Queen Victoria, chapter fifteen, shall extend and apply to every such judgment, statute, recognizance, inquisition, obligation, specialty or acceptance of office, as is by section eight of the first-mentioned act required to be registered, so that it shall be obligatory on the crown, in order to bind the lands, tenements or hereditaments, of its debtors or accountants, as against purchasers, mortgagees or creditors, becoming such after the thirty-first day of December, one thousand eight hundred and fifty-nine, to re-register, in like manner as it is obligatory on a private person, and so that notice of any such judgment, statute, recognizance, inquisition, obligation, specialty or acceptance of office, not duly re-registered, shall not avail against purchasers, mortgagees or creditors, becoming

(a) See Shelford's Real Prop. Statutes, pp. 434—456, 6th ed.

(b) See pp. 283, 284.

such after the thirty-first day of December, one thousand eight hundred and fifty-nine, as to lands, tenements or hereditaments; and this provision shall apply to every such judgment, statute, recognizance, inquisition, obligation, specialty or acceptance of office, as since the passing of the first-mentioned act has been registered under the provisions therein contained, or as shall hereafter be so registered: This section shall not extend to Ireland (*a*).

XXIII. The *bond fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security (*b*).

Not to be bound to see to the application of purchase money.

XXIV. Any seller or mortgagor of land, or of any chattels, real or personal, or choses in action conveyed or assigned to a purchaser, or the solicitor or agent of any such seller or mortgagor, who shall after the passing of this act conceal any settlement, deed, will or other instrument, material to the title or any incumbrance from the purchaser, or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, shall be guilty of a misdemeanor, and being found guilty shall be liable, at the discretion of the court, to suffer such punishment, by fine or imprisonment for any time not exceeding two years, with or without hard labour, or by both, as the court shall award, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee, for any loss sustained by them or either or any of them in consequence of the settlement, deed, will or other instruments or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed by the falsification of such pedigree; and in estimating such damages, where the estate shall be recovered from such purchaser or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them or either or any of them in improvements on the land; but no prosecution for any offence included in this section against any seller or mortgagor, or any solicitor or agent, shall be commenced without the sanction of her Majesty's attorney-general, or in case that office be vacant of her Majesty's solicitor-general; and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted as the attorney-general or the solicitor-general (as the case may be) shall direct.

Punishment of vendor, &c. for fraudulent concealment of deeds, &c. or falsifying pedigree.

(*a*) See Shelford's Real Prop. Statutes, pp. 563—582, 6th ed.

(*b*) See the clauses to which this section has reference, pp. 352, 402, 593, 1396, 1403.

Interpretation
of terms.

XXV. In the construction of the previous provisions in this act the term "land" shall be taken to include all tenements and hereditaments, and any part or share of or estate or interest in any tenements or hereditaments, of what tenure or kind soever; and

The term "mortgage" shall be taken to include every instrument by virtue whereof land is in any manner conveyed, assigned, pledged or charged as security for the repayment of money or money's worth lent, and to be reconveyed, re-assigned or released, on satisfaction of the debt; and

The term "mortgagor" shall be taken to include every person by whom any such conveyance, assignment, pledge or charge, as aforesaid shall be made; and

The term "mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, assignment, pledge or charge as aforesaid, is made or transferred:

The term "judgment" shall be taken to include registered decrees, orders of Courts of Equity and Bankruptcy, and other orders having the operation of judgments.

Trustees and Executors.

Trustee, &c.
making pay-
ment under
power of at-
torney not to
be liable by
reason of death
of party giving
such power.

XXVI. No trustee, executor or administrator, making any payment, or doing any act *bonâ fide* under or in pursuance of any power of attorney shall be liable for the moneys so paid or the act so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor or administrator, was not known to him (a): Provided always, that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor or administrator, if the money had not been paid away under such power of attorney.

As to liability
of executor or
administrator
in respect of
rents, cove-
nants or agree-
ments.

XXVII. Where an executor or administrator, liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted

(a) See p. 1234.

or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part, or any further part, (as the case may be,) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

XXVIII. In like manner, where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rentcharge (whether any such rent be by limitation of use, grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance; but nothing herein contained shall prejudice the right of the grantor or those claiming under him, to follow the assets of the deceased into the hands of the

As to liability of executor, &c. in respect of rents, &c. in conveyances on rentcharge.

person or persons to or among whom the said assets may have been distributed.

As to distribution of the assets of testator or intestate after notice given by executor or administrator.

XXIX. Where an executor or administrator shall have given such or the like notices as in the opinion of the court in which such executor or administrator is sought to be charged would have been given by the Court of Chancery in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in the present act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

Trustee, executor, &c. may apply by petition to judge of Chancery for opinion, advice, &c. in management, &c. of trust property.

XXX. Any trustee, executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to any judge of the High Court of Chancery, or by summons upon a written statement to any such judge at chambers, for the opinion, advice or direction of such judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, such application to be served upon or the hearing thereof to be attended by all persons interested in such application, or such of them as the said judge shall think expedient; and the trustee, executor or administrator acting upon the opinion, advice or direction given by the said judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject matter of the said application; provided nevertheless, that this act shall not extend to indemnify any trustee, executor or administrator, in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee, executor or administrator, shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction; and the costs of such application as aforesaid shall be in the discretion of the judge to whom the said application shall be made.

Every trust instrument to be deemed to contain clauses

XXXI. Every deed, will or other instrument creating a trust either expressly or by implication shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in

the words or to the effect following; that is to say, "That the trustees or trustee for the time being of the said deed, will or other instrument, shall be respectively chargeable only for such monies, stocks, funds and securities, as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker, broker or other person with whom any trust monies or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds or securities, nor for any other loss, unless the same shall happen through their own wilful default, respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument" (a).

for the indemnity and reimbursement of the trustees.

XXXII. When a trustee, executor or administrator shall not, by some instruments creating his trust, be expressly forbidden to invest any trust fund on real securities, in any part of the United Kingdom, or on the stock of the Bank of England or Ireland, or on East India stock, it shall be lawful for such trustee, executor or administrator, to invest such trust fund on such securities or stock; and he shall not be liable on that account as for a breach of trust, provided that such investment shall in other respects be reasonable and proper.

As to investments by trustees.

Extent of Act.

XXXIII. This act shall not extend to Scotland.

Act not to extend to Scotland.

(a) See the clauses which it is the intention of this section to supersede, pp. 1398, 1567.

PRECEDENTS

IN

CONVEYANCING,

§c. §c. §c.

ABSTRACTS OF TITLE.

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Definition and use of an abstract.

SECT. 1. When land or other property, not passing by mere delivery, but held by a title, depending on documentary evidence, is to be sold, an abstract of the documents, commonly called an abstract of title, is now furnished by the vendor's solicitor. An abstract of title has been defined to be, "a statement of the documents and evidences relating to certain particular premises, in which all that is necessary to enable counsel to form a correct judgment upon the validity of the title is given at length, and all that is immaterial is retrenched. Its object is to show the actual state of the title of the premises to which it relates, and by what charges and incumbrances they are affected. Strictly, every judgment by which the property is bound should be mentioned in the abstract (*Richards v. Barton*, 1 Esp. N. P. C. 268), although this is seldom done, 3 Stew. Conv. 1.

Delivery of the deeds.

2. Formerly it seems to have been the practice for the vendor's solicitor to deliver the deeds themselves to the purchaser's solicitor, by whom the abstract was prepared, *Temple v. Brown*, 6 Taunt. 60; but it has since been held in several cases, that the mere delivery of the deeds is not sufficient, and the purchaser may now require to have an abstract also, *Horne v. Wingfield*, 3 Scott, N. R. 340; *Morris v. Kearsley*, 2 Y. & Coll. 139.

Not a substitute for the abstract.

Purchaser's right to a good title.

3. It is well known that every vendor of real property is under an obligation of showing a good title to the interest he proposes to sell; possession alone, although an important circumstance when it has been long and uninterrupted, is not even *prima facie* evidence of title; for the party in possession may hold as tenant at sufferance, at will, from year to year, for a term of years, for life, or subject to charges, or as mortgagee, or in respect of some other estate, not conferring a power of conveying the interest agreed to be sold. There may be good titles in which the origin of them cannot be shown by any deed or will; but in such cases something satisfactory must be produced that there has been such a long uninterrupted possession,

enjoyment and dealing with the property as to afford a reasonable presumption that there is an absolute title in fee simple, *Cotterell v. Watkins*, 1 Beav. 361 ; 3 Jur. 283. This right of a purchaser to require the production and proof of a satisfactory title does not arise in consequence of an express agreement between the parties, but it is implied by law ; for every person who contracts for the sale of an estate, or an interest in it, without qualification, asserts in fact that he has power to sell, and, consequently, that he has a good title. Where there is an express stipulation to give such a title as shall be *satisfactory* to the purchaser, the usual objections only can be taken, *Lord v. Stephens*. 1 Yo. & Coll. 222.

A marketable title is a title which, at all times, and under all circumstances, may be forced upon an unwilling purchaser, *Pyrke v. Waddingham*, 10 Hare, 1. And it has been decided, that where a question arises between parties who are about to enter into the relationship of vendor and vendee, as to the meaning of a good or sufficient title, there must be such a title as the Court of Chancery would adopt as a sufficient ground for compelling a specific performance ; and by a stipulation for a good title must be understood not such a title as would support a verdict for the purchaser in an action of ejectment against a mere stranger, but such an one as would enable the purchaser to hold the property against any person who might probably challenge his right to it, *Jeakes v. White*, 6 Exch. 881. A title is first shown when the abstract states all the matters which, if proved, make a good title. A title is made when the matters are proved, *Parr v. Lovegrove*, 4 Drew. 170.

Marketable title, what.

A vendor may, however, stipulate for the sale of an estate with such title as he happens to have ; and thus limit his implied undertaking to make a good title. A person who contracted for the purchase of the next presentation to a living, "on having such title as the vendors had received," was held bound to accept it, although it appeared to be defective, *Wilmott v. Wilkinson*, 6 Barn. & C. 506 ; *S. C.* 9 Dowl. & Ryl. 620. So a vendor may stipulate for the waiver of a specific defect in the title, however radical and incurable, *Corrall v. Cattle*, 4 Mees. & W. 784. So where the vendor agreed to sell leaseholds for a certain term, "as he held the same," and the purchaser agreed to accept a proper assignment of the premises "without requiring the lessor's title," the purchaser was precluded from calling in question the lessor's title to grant the lease, *Spratt v. Jeffery*, 10 Barn. & C. 249 ; *S. C.* 5 Mann. & Ryl. 188. Again, where a purchaser agreed to accept the vendor's title "without dispute," the purchaser afterwards objected that, at the date of the agreement, there was a flaw in the vendor's title, consisting of a subsisting incumbrance, which left the legal estate in the property outstanding. Upon a bill filed by the vendor, for specific performance, it was held, that the purchaser

Obligation to show good title may be limited by contract.

was precluded, by the terms of his contract, from insisting on the objection, *Duke v. Barnett*, 2 Coll. C. C. 337; 15 L. J., Chan. 173. Where the assignees of a bankrupt, in putting up to sale his interest in an estate, provided by the conditions of sale that the purchaser should have an assignment of the bankrupt's interest in the estate, "under such title as he lately held the same, an abstract of which might be seen at a particular office," it was held that the purchaser could not insist upon any other title than such as the bankrupt had, *Freme v. Wright*, 4 Madd. 364; but where a vendor provides by the conditions of sale that he will give to the purchaser only certain specified deeds, Lord Eldon is reported to have said, that the purchaser is not bound to take a bad title, or such title as appears upon the deeds, *Dick v. Donald*, 1 Bligh, N. S. 655. Conditions of sale, describing a title to premises as arising under an exchange, by virtue of an award of commissioners under an inclosure act, are satisfied by showing a title by award in respect of other lands and of common rights, without showing the further particulars of the exchange; and if the vendor contracts to commence his title with the award, the purchaser has no right to inquire into the title of the lands given by the vendor in exchange for the lands contracted to be sold, *Cuttell v. Corrall*, 4 Y. & Coll. 228. The father being tenant for life, and his son tenant in tail, the father was made a bankrupt; his assignees contracted to sell the estate to the son, with a stipulation he should not require a further title than the will of his grandfather. The son's solicitor said that he did not require any abstract, because the son derived under the same title. He then made objections as to the insolvency and bankruptcy of the father, and it was held that he had not waived such objections, *Sidebottom v. Barrington*, 3 Jurist, 947.

Cases as to sale
of leases.

Where a purchaser had waived his right to a reference as to title to the master, who was only ordered to settle the lease, and in doing so circumstances were disclosed showing that the vendor could not make a valid title to the lease which he had undertaken effectually to grant, the court would not decree a specific performance, *Warren v. Richardson*, 1 Younge, 1, and a purchaser of leaseholds by auction was held entitled to avail himself of a defect in the lessors' title, which he had discovered, notwithstanding the conditions of sale provided "that the vendor should not be obliged to produce the lessors' title," *Shepherd v. Keatley*, 1 Cr. Mees. & Rosc. 117; S. C. 4 Tyrw. 571. By express stipulation the purchaser may be precluded from inquiring into the title, *Sellick v. Trevor*, 11 Mees. & W. 722. Though an individual purchaser may consent to accept a defective title, it is doubtful whether the directors of a railway company acting on behalf of the company can do so, *Eastern Counties Railway Company v. Hawkes*, 5 H. L. Cas. 331, 24 Law J., Ch. 601. Where the assignee of a lease, who on a sale of it stipulated not to produce any

title prior to the lease, brought an action against the purchaser for not completing his purchase, and in the declaration it was stated that the vendor was possessed of the lease, it was held that, the purchaser having rejected the abstract, the vendor was bound to prove the execution of the lease by calling the attesting witness, and that it was not sufficient to prove the assignment to the vendor, *Laythoarp v. Bryant*, 1 Bing. N. S. 421. Upon a sale by auction of leasehold premises, one of the conditions was as follows: "The lessor's title will not be shown, and *shall not be inquired into*." In a suit to enforce specific performance by the vendor against the purchaser, the latter objected that the lessors' title appeared by Act of Parliament produced by the purchaser, which showed that the lessors had no power to lease the premises: it was held, that the condition provided that the title should not be shown, and also precluded inquiry for every purpose, and specific performance was decreed, *Hume v. Bentley*, 5 De G. & S. 520; 16 Jur. 1109; 21 L. J., Chan. 761.

The purchaser of shares in a mining company is not entitled to a regular abstract of title to the mines themselves as if he were purchasing a share in the land in which they are worked, but he is entitled to such evidence of the constitution of the company and of the nature of the title under which the mines are worked, as will show that the subject matter of the purchase is what it professes to be, and that the proposed form of transfer to him will give him a valid title to the shares, *Curling v. Flight*, 2 Phill. C. C. 613. Mining shares.

4. A vendor is not only bound to exhibit a good title by the abstract but to verify it by the production of the necessary documents. If a vendor intends to deprive a purchaser of the right to the production of any evidence necessary to verify the title beyond what the title-deeds in his own custody will supply, he is bound to make that intention previously known to the purchaser, in clear and explicit terms. By one of the printed conditions of sale, the plaintiff undertook to give a good title to an estate; and by another condition the plaintiff was not to be called on to produce the original deeds not in his possession: it was held, that the plaintiff was bound to verify the abstract of title delivered by him, although some of the deeds were out of his possession, *Southby v. Hutt*, 2 Mylne & Cr. 207; 1 Jurist, 100. Production of documents by vendor.

5. The abstract must be prepared and the deeds produced at the vendor's expence. Where the title-deeds are in the hands of persons residing in different parts of the country, the vendor must bear the expense of the purchaser sending a clerk to compare the abstract with the deeds, *Hughes v. Wynne*, 8 Sim. 85. Where it is the usage of the profession that certain business should be intrusted to an agent in London, a country solicitor will not be allowed to charge for his attendance in London to perform that business, although his client has requested his attendance, unless the solicitor has first explained to his Abstract prepared at vendor's expense.

client that by the usage of his profession such attendance is considered unnecessary. The comparison of an abstract of title with the title-deeds is business within this rule, and a country solicitor will not be allowed to charge for his personal attendance in London, in respect of such business, *Alsop v. Lord Oxford*, 1 My. & K. 564.

Division of the subject.

6. What relates to abstracts may be comprehended under the two general heads, 1st, Preparing the abstract; 2nd, Perusing the abstract; the former of which is the business of the solicitor, the latter of the conveyancer.

7. PREPARING THE ABSTRACT.

What comprehended under preparing abstract.

8. Preparing the abstract is to be considered as to what regards, 1. The commencement of the abstract; 2. The head of the abstract; 3. The contents of the abstract; 4. The comparing the abstract with the title-deeds.

1. Commencement of the abstract.

9. The most satisfactory document with which an abstract can commence is a purchase deed, from which it may be usually presumed that the state of the ownership was then investigated. It should in no case commence with an assurance that depends for its validity on any prior deed, as a settlement in pursuance of articles, or an appointment under a power; but on this point, and also as to how far back the abstract ought to be carried, see *post*, ss. 24, 25.

2. Head of the abstract.

10. Every abstract ought to have a head or title, which should show the name of the person whose title is to be considered, the estate he has, and the lands, &c. to which it relates, in this manner:—"An abstract of the title of A. B., to the fee simple of the manor of _____, in the county of _____," or, "to a farm or close, &c., in the parish of, &c."

When lands are held for lives or the residue of a term, then the abstract should be headed in this form—"An abstract of the title of _____ to a farm, &c., called _____, situate in, &c., for the lives of, &c.," or "for the residue of a term of _____ years," or "the residue of a term determinable, &c."

3. Arrangement of the abstract.

11. When an abstract relates to lands under different titles, in different shares, or under different tenures, as freehold, copyhold, &c., the abstract of each farm or different property should be arranged separately.

In case of an abstract concerning one estate only, carried on by a regular series of deeds, wills, &c., the several instruments should be abstracted in chronological order. But where several parts of the estate have been purchased at different times, or are held under various titles; or where an estate has been subdivided into different shares, which have been the subject of different sales, mortgages, settlements, &c.; the arrangement should keep the title to each estate or each share in a connected series, as long as the title remains distinct.

In cases of this sort it is proper to give subordinate heads to the different parts of the abstract, for example—

“As to the farm called A., purchased of B. ;”

or “As to the third part or share of A. ;”

and when two or more farms or estates, or two or more shares, become vested in the same person, and the title applicable to the several farms or the several shares is united, there should be a new heading directing the attention to this fact, thus—

“As to the farm called A., purchased of C., and the farm called B., purchased of D.,” or “As to the third part formerly of A., and the third part formerly of B.” See 1 Prest. on Abst. pp. 40, 53.

Where any part of the estate is copyhold, there should be a separate abstract, and where, as it frequently happens, different copyholds are parcel of different manors, there should be a distinct abstract of the title to the copyhold lands held under each manor.

12. Abstracts ought to contain all the material parts of every instrument, varying according to the nature of the instrument to be abstracted, whether it be a deed, record, act of parliament, fiat or adjudication in bankruptcy, or will, or codicils. 4. Contents of the abstract.

13. Abstracts of deeds should contain, first, the date ; secondly, the names and descriptions of the parties, and their character as heirs, devisees, executors, and the like ; thirdly, the recitals of material facts, as marriages, descents, deaths, failure of issue, probates of wills, intestacies, administrations, creation of powers, and any facts bearing upon the title which are important. Where recitals merely refer to prior deeds which have been abstracted, reference to their dates will be sufficient. Fourthly, the witnessing part, which should state the consideration and the purpose for which the deed was made. Where a trust or power requires the money to be paid in a special manner, then such part of the deed as expresses the mode of payment should be stated, in order to show that all the requisites of the trusts or power have been observed. See 1 Prest. Abst. 70. The consideration requisite for making a deed operative in a particular form as a bargain and sale, or a covenant to stand seised, should be stated. The clause of the receipt of the consideration should be shortly stated, unless special circumstances require it to be noticed fully. The names of the grantors and grantees, and the direction (if any) by other persons, should be stated with the exact words used in conveying the estate. The description of the parcels should be inserted in the abstract of the first instrument in which it appears and referred to in the subsequent deeds. If there has been any variation in the description, it should be mentioned, and when there is an ancient and modern description varying in any important particulars, it will be necessary to insert both in the abstract. The description of parcels by reference to a former deed should be given verbatim. The general words need not be fully Deeds in general.

stated, unless they are required in aid of an insufficient description of the parcels. Any exception in the grant relating to the property sold should be noticed. Fifthly, the *habendum* should be stated verbatim as regards the grantee, his heirs, &c., in order that it may appear whether it is simply unto the grantee and his heirs, &c., or *unto and to the use of* the grantee, his heirs, &c.

Limitations.

The limitations and uses to which the estate is subject must of course be stated accurately. In abstracting words of limitation marking the duration of the estate, it is very common in practice to give their effect, instead of stating the terms of the deed thus: to A. for life, with remainder to the first and other sons of A. successively in tail, remainder to the daughters of A. in tail, with cross remainders between them in tail, with remainder to A. in fee. But when limitations are so abstracted, it is particularly incumbent on the solicitor for the purchaser to see by examination of the deed or will that the effect of the limitations is correctly given in the abstract. See 1 Prest. Abst. 116.

Every limitation out of the common course, and every proviso defeating or abridging any limitation, should be accurately given. It is sufficient to notice in general terms limitations which have altogether failed, or which cannot operate in favour or to the prejudice of the purchaser. Provisoes for cesser of terms, when relied on as operative, should be fully stated. Trusts which have never arisen, or which cannot affect the purchaser, need not be fully stated. When the trusts are material to the title, it should be shown that the directions have been duly performed, or have failed of effect; and if it is incumbent on the purchaser to see money applied according to certain trusts, then the trusts which direct the application should be stated. 1 Prest. Abst. 134.

Powers.

Powers of appointment and authorities or trusts for sale, whether with or without the consent of other parties, or on the happening of certain events, if they have been or are intended to be exercised, should be set out verbatim. The clause for exonerating the purchaser from seeing to the application of the purchase money should be fully stated, and as a general rule the trusts for the application of the money should be omitted, but in the absence of any such clause, the manner in which the money is to be applied should be stated.

Powers of sale and exchange, partition, enfranchisement, or for the appointment of new trustees, when they have been or are intended to be exercised, should be fully stated, but in other cases it is sufficient to state generally that the deed or will contains such powers.

Covenants.

The common covenants may be referred to generally, but any special covenants should be noticed. Particular attention must be given to the exceptions (if any) in the covenants for quiet enjoyment and against incumbrances, as they often disclose incumbrances, or the

reservation of rights not mentioned elsewhere. See *post*, s. 41. Sixthly, the abstract should always mention by whom the several deeds and wills are executed, and, where a particular mode of execution is required, a compliance with the prescribed mode must be shown. It should be stated by whom the receipt (if any) endorsed on the deed is signed. Any further requisite to the validity of the deed, as enrolment, livery of seisin, &c., should be stated. Where lands lie in a register county, the registration should be mentioned by referring to the book and page where the registry is to be found.

14. Abstracts of particular deeds must contain additional particulars. Particular deeds.
In the abstract of an Appointment should be set out the power out of Appointment. which it arises, also the power of revocation, if there be one; also the execution and attestation very accurately.

The abstract of an Exchange ought to contain the eviction clause, Exchange. and the powers and saving clause given fully.

The abstract of a Bargain and Sale must state whether by indenture Bargain and sale. or deed-poll, and the consideration must be set out very carefully, as also the time of enrolment.

An abstract of a Feoffment ought to state the indorsement of Feoffment. livery of seisin.

In the abstract of a Lease, the time of its commencement and the covenants should be stated accurately; and if it be an underlease, the original lease and all underleases should be given.

15. An abstract of a Private Act of Parliament, otherwise called Acts of Parliament. an "Estate Act," should state the session when it passed, and the day when it received the Royal Assent, the title of the Act, the enacting clauses which are material, the indemnity to purchasers, and saving clause. When any local Inclosure Act is abstracted, the abstract ought to show such of the provisions as are material to the deduction of the title in question, unless a copy of the act accompanies the abstract. The Commissioners' Award should also be abstracted so far as regards the lands to be dealt with. The abstract of the Inclosure Act and Award should be preceded by an abstract of the title to the estate in respect of which the allotments were made.

16. The abstract of a Fine should state the term and the court in Fine. which it was levied, the names of the plaintiff and defendant, what kind of fine, and the description of the parcels.

17. The abstract of a Recovery should show the term in which it Recoveries. was suffered, names of demandant, tenant, and vouches; parcels, and the county in which they are situated; also the time at which the writ of seisin was returnable, and seisin delivered.

18. An abstract of a Will should contain the name and description Wills. of the testator, the words of the gift or devise, and every expression in the will in any manner abridging, giving over, or charging the property, in the words of the testator; the execution and attestation; the

death of the testator; and (generally, if of freehold property, who was the testator's heir at his death; also if there be a confirmation of a will by the heir-at-law,) the appointment of executors; the court where and by whom proved; together with the date of the probate, and, in a register county, the registry: codicils which revoke a will should be given according to the order of the dates; also, in cases of republication, the date of the same.

Proceedings in
Chancery.

19. Where proceedings in Chancery are to be abstracted, the time of filing the bill, together with the names of the plaintiffs and defendants; the decree as far as it affects the title, as by declaring the will of the real estate duly proved, decreeing a redemption, foreclosure, partition, &c.; directing a sale or mortgage to be made, portions to be raised, and application of the money, &c.; the master's report, with the order for confirmation; and any proceedings in the judge's chambers which are material to the title.

Copyholds.

20. In abstracting titles to Copyhold Estates, the date of each surrender and admittance should be shown, the person by whom the surrender was made, the admittances or grants by the lord, upon forfeitures, &c., the lands which were surrendered or to which admittance was granted, also the admittance of the heir as such, the surrenders made to the use of the will, and whether made generally or specially. The will, if any, whether made in pursuance of a surrender or not, should also be given so far as it affects the copyholds in question.

Delivery of the
abstract.

21. In most contracts for the sale of estates a day is fixed, on which the vendor should deliver the abstract of title, and at law the contract may be avoided by the purchaser in case of failure on the part of the vendor, *Berry v. Young*, 2 Esp. 640; *St. Alban's (Duke) v. Shore*, 1 H. Bl. 280; but in equity this rule is not strictly adhered to, *Wynn v. Morgan*, 7 Ves. 202; 1 Sugd. V. & P. 10th ed. 410 *et seq.*; 2 Dixon on Title-Deeds, 452.

Comparing the
abstract with
the title-deeds.

22. On the delivery of the abstract by the vendor's solicitor, the duty devolves on the solicitor for the purchaser to compare the abstract with the title-deeds; and if the latter wish to relieve himself from all responsibility, he will lay the whole matter before counsel. Where an attorney, in stating a case for the opinion of counsel, assumed that a party was owner in fee, instead of setting out the deeds which would have shown the existence of a life estate, it was held to be the attorney's duty to take care not to draw wrong conclusions from the deeds laid before him, but to state the deeds to the counsel whom he consulted, or he must draw conclusions at his peril, *Ireson v. Pearson*, 3 B. & C. 813; *S. C.* 5 D. & R. 699.

PERUSING THE ABSTRACT.

What compre-
hended under
the perusal of
the abstract.

23. The perusal of the abstract is to be considered as it relates to —
1. The commencement of the abstract. 2. The contents of the ab-

abstract. 3. The accompaniments of the abstract, or evidences verifying the same.

24. The conveyancer has in the very first instance to consider whether the abstract is carried back sufficiently far so as to enable him to advise upon the title; and where it commences with a deed depending for its validity upon a prior deed, he will require to see such deed; as where a settlement is made in pursuance of articles, he will wish to have an opportunity of inspecting the articles, or where there is an appointment in pursuance of a power, to see the deed creating the power; so where an estate tail is shown, the abstract ought to contain a history of its creation; so in abstracting title-deeds relating to terms for years, the deed creating the term should of course be the first in the abstract. So, for the like reason, when any part of the limitations is to the uses or upon the trusts of a former deed, or where the parcels are described by reference to some prior conveyances, the prior deeds, whatever be the date of them, must appear in the abstract; and where the origin of the title is a grant from the Crown, the grant should be abstracted, however ancient it may be, in order to show that there is no remainder or reversion in the Crown; but this need not be insisted on in every case, if the deed is lost, and possession has gone with the estate for a length of time, *Coussmaker v. Sewell*, cited 2 Sugd. V. & P. 10th ed. 134; indeed, long possession, enjoyment, and dealing uninterruptedly with an estate, will of itself in some cases afford a reasonable presumption that there is a good title, without either will or deed, *Cotterell v. Watkins*, 1 Beav. 261; S. C. 3 Jur. 283.

1. Commencement of the abstract.

Effect of long possession.

25. The general rule in regard to abstracts of title to freehold estates of inheritance has hitherto been that the abstract must show a regular deduction of title for sixty years at least; and it does not appear that any alteration can be made in the time of commencing the abstract, notwithstanding the 3 & 4 Will. 4, c. 27, for although that act has limited the period to forty years, beyond which an adverse possession becomes indefeasible, yet in many cases, particularly where there is a subsisting tenancy for life, it will render it necessary to carry the abstract further back, see 1 Hayes's Introd. Conv. 5th ed. 280; 2 Sugd. V. & P. 10th ed. 353; 1 Bythw. & Jarin. by Sweet, 3rd ed. 59 *et seq.* It has been decided, that the period for which a good title is required to be shown is still sixty years, notwithstanding the statute 3 & 4 Will. 4, c. 27, *Cooper v. Emery*, 1 Phill. C. C. 388. The established practice of conveyancers has long been to require the regular deduction of a title for sixty years at least; and very frequently, owing to particular circumstances, for a longer period. It is impossible to define beforehand all the particular circumstances which render it necessary to extend the abstract beyond that period; if the contents of the abstract lead to the conclusion that there were estates tail subsisting, it is necessary to call for the prior title. So

Effect of the new Statute of Limitations.

where an abstract commences with a fine or recovery, or with a statute deed to bar an entail, it is proper to call for the production of the assurance creating the entail, in order to see that the parties were competent to bar the entail. Indeed, whenever any statement in the abstract leads to a fair inference of the existence of a defect in the prior title, the purchaser may require it to be explained by the production of the prior title. Although recitals in deeds of the pedigree of parties who conveyed the estate may be evidence as against the parties to such deeds, yet they cannot be evidence of pedigree as against third persons, *Fort v. Clarke*, 1 Russ. 601. Lord Eldon was of opinion that it was a serious objection to a title that an abstract did not go further back than forty-three years, *Paine v. Mellor*, 6 Ves. 349; see *Robinson v. Elliott*, 1 Russ. 599. The period of sixty years was probably fixed partly with reference to the limitation of real actions (32 Hen. 8, c. 2; see *Barnwell v. Harris*, 1 Taunt. 430), and partly with reference to the *duration of human life*, and the existence of particular estates; for an estate may be held adversely, and dealt with as an estate in fee simple during a life or lives, and the existence of particular estates, without affecting the rights and remedies of those in remainder. Although the recital of a deed is constructive notice of its contents, a purchaser will be compelled to complete his contract without the inspection of every deed, unless the absence of the deed recited throws some reasonable doubt upon the title of the vendor; and, therefore, when the title under the conveyance containing the recital is fortified by sixty years subsequent undisputed possession, the loss of the deed recited will not throw such a reasonable doubt upon the title of the vendor as will prevent the court from decreeing a specific performance, *Prosser v. Watts*, 6 Madd. 59. A title more than sixty years old commenced by a general devise, a deed more than sixty years old recited the seisin of the devisor; it was held, that that, coupled with the continued possession, was sufficient evidence of seisin. There was ground to assume that the vendor had deeds earlier than those on the abstract. It was held, that the purchaser was entitled to the *inspection* of those deeds if in the vendor's possession, but not to have them in the abstract. It was questioned whether a purchaser is generally entitled to inspection of deeds earlier than a sixty years' title, *Parr v. Lovegrove*, 4 Drew. 170. See *Prosser v. Watts*, 6 Madd. 59.

Advowsons.

26. Advowsons were not within the old Statutes of Limitations, but they are within the provisions of 3 & 4 Will. 4, c. 27, ss. 30 *et seq.*; and the abstracts of title should be carried back for a century, and contain a statement of the presentations, with the names of the patrons and clerks presented during that period.

Title to tithes.

27. The 3 & 4 Will. 4, c. 100, has shortened the period for establishing claims to a modus, exemption, or discharge from tithes.

title to tithes, or to a rectory inappropriate, of which the tithes form part, must commence with the original grant, or letters patent, from the Crown, in order to ascertain that there was no remainder or reversion in the Crown; that no rent was reserved upon the grant, and that no limitation or condition is contained in the grant which can affect the purchaser. Tithes, or rent-charges in lieu of tithes, in lay hands, are within the stat. 3 & 4 Will. 4, c. 27, and, therefore, it is not necessary to deduce the intermediate title between the original grant of tithes and the modern title, but it is necessary to show a title for sixty years or upwards. It must be seen that the tithes were specifically named in the fine, recovery, deed or will by which they are alleged to have passed; for a conveyance of land, and of all hereditaments and appurtenances *thereunto belonging*, will not pass the tithes, *Phillips v. Jones*, 3 Bos. & P. 362; *Chapman v. Gatcomb*, 2 Bing. N. S. 516; *Reg. v. Neville*, 8 Q. B. 463; Shelford on Tithes, pp. 20—24, 3rd ed.

As almost all inappropriate tithes have either been commuted into rent-charges or merged under the provisions of the acts for the commutation of tithes, the parochial agreements, awards and merger of tithes and the apportionment of rent-charges in lieu of such tithes, which have been confirmed by the tithe commissioners, will form part of the evidence to which resort must be had where rent-charges in lieu of tithes are the subject of sale or mortgage, or where the lands are sold as exempt from tithes, on the ground that they have been merged. Lands which in the parochial agreement and apportionment, confirmed by the tithe commissioners, are treated as free from tithes, cannot afterwards be made subject to the payment of them, *Walker v. Bentley*, 9 Hare, 629. But where a rent-charge has been fixed, the tithe commutation acts do not prevent courts of equity from determining what parties are entitled to it, *Clarke v. Yonge*, 5 Beav. 523.

Rent-charges
in lieu of tithes.

Where lands are sold exempt from tithes, on the ground of the existence of a modus or any exemption by composition real, or otherwise, it will be necessary to resort to the parochial agreement or the award of the tithe commissioners and the apportionment, in order to ascertain that the alleged exemption has been recognized in the proceedings confirmed by the tithe commissioners. See Shelford on Tithes, 3rd ed. and Supplement thereto.

28. The 2 & 3 Will. 4, c. 71, shortening the time of prescription in certain cases, has removed some of the difficulties which attend the investigation of titles founded on prescription. Prescription.

29. The rights of the Crown are not affected by the 3 & 4 Will. 4, c. 27; but it is expressly within the provisions of the Prescription and Modus Decimandi Acts; and by the 3 & 4 Will. 4, c. 74, remainders and reversions in the Crown are not to be affected by the provisions for barring entails. The principal statutes, however, directly limiting the claims of the Crown, are the 21 Jac. 1, c. 2, and 9 Geo. 3, c. 16, Limitations of claims of the Crown.

which restrict the right of bringing actions for the recovery of lands to the period of sixty years; but this latter statute has been held not to give a title, only to take away the right from the Crown to bring an action, *Goodtitle v. Baldwin*, 11 East, 495.

2. Contents of the abstract.

30. The contents of abstracts may be said to comprehend the whole learning of the law of real and personal property, to which the conveyancer must occasionally have recourse in performing the office of perusing abstracts. To enter into details is not within the scope of a preface, but the following outline is intended to direct his attention to the most important points which may demand investigation. It is the duty of the conveyancer to consider the deduction of the title, the evidence by which it is supported, the defects, if any, which appear in the title, or in its evidence; and to call for such information as shall appear necessary to elucidate the real state of the facts, and also for such documents as in the nature of the case may be presumed to exist, although no notice, or only very slight notice, may be taken of them in the abstract itself, 1 Preston on Abstracts, 203.

Recitals.

31. In considering the parts of deeds, the recitals are the first in order which claim attention, they being evidence against the parties, *Doe v. Rogers*, 3 Ad. & Ell. 513; and as against them, they may be relied on as estoppels, *Doe v. Dodd*, 2 Nev. & Mann. 45; *S. C.* 5 Scott, 35. The recital in a deed of a former deed between the same parties proves as between the parties so much of the former deed as is recited and no more, *Gillett v. Abbott*, 7 Ad. & E. 783. So where a recital shows the objects of the parties to the deed, it is necessary to see that it does not vary from the operative part, or it may vitiate the deed itself.

Consideration.

32. The next thing is the consideration, the nature of which, and that it has been fully and properly paid, ought to be duly ascertained and set forth. So where the consideration is to be paid in a particular manner, in execution of a power or performance of a trust, &c., it is of importance to know that the consideration money has been paid to the parties competent to give a discharge, and exonerate the lands from the incumbrance.

Operative words.

33. Formerly particular words were considered necessary in the operative part of the deed, but it is now the practice of the courts, both of law and equity, to give effect to deeds in some way or other, though not according to their literal construction; but care must be taken that the words of the grant proceed from parties competent to do what they profess to do. Although this indulgence is allowed to the intention of the parties, and their words are thus favourably construed, care must be taken that those circumstances existed, without which the deed cannot operate in the mode required: for example, no instrument can operate as a feoffment without livery of seisin; no instrument previously to the statute 8 & 9 Vict. c. 106, s. 2, could operate as a grant unless either from its

own nature as a real or other incorporeal hereditament, or from its relative quality as a reversion or remainder, it lies in grant. No instrument can operate as a covenant to stand seised unless there exist the connection of blood or marriage. No instrument can operate as a bargain and sale under the statute of uses and enrolments unless there be a consideration in money or money's worth, nor unless there be enrolment in due time, but a bargain and sale void for want of enrolment may operate, if circumstances admit, as a grant, *Haggerston v. Hanbury*, 5 B. & C. 101. No instrument can operate as a surrender unless it be made to the person who has the next vested estate in reversion or remainder, and that estate be as large as or larger than the estate to be surrendered. No instrument can operate as a release of right unless it be made to a person or one of the persons in whom the estate is vested, subject to that right. Nor can an instrument operate as a release or as a confirmation unless there be a particular estate capable of enlargement, 3 Prest. Abst. 23, 24. It will be necessary to consider the character of the grantor, whether as heir, trustee, executor, and the like. Where the grantor is heir, questions will arise as to his descent, legitimacy, &c.; and in tracing a descent it will be necessary to consider the old law, which governs titles before 1834, and the new law contained in 3 & 4 Will. 4, c. 106; so likewise whether the person, from whom the grantor derives his title, died intestate, or whether dower has attached, or otherwise, and herein of the law of dower as affecting persons married before the 1st January, 1834, and since that time, see 3 & 4 Will. 4, c. 105. Where the grantor is a trustee, it must appear that he has strictly pursued his power, and herein the doctrine of trusts and powers must be brought under consideration.

34. Under the head of parcels, it is the province of the conveyancer to ascertain that the lands described or referred to in former deeds are comprised in the deed to which his particular attention is directed, and this object can be effected only by a careful comparison of every deed with the one going before. Care must also be taken that the description of the parcels be true and certain, or capable of being reduced to a certainty. See *post*, s. 51, p. 29. Parcels.

35. After the parcels follows the *habendum*, the object of which being to define the duration and quantity of interest intended to pass to the grantee, naturally leads to the consideration of estates of different kinds, as whether the grant be in fee simple, fee tail, for life, or for years; whether it be to one grantee or several grantees, and whether, in the latter case, as joint-tenants or tenants in common; also, where it is an estate for life, whether it be for the life of the grantee or some other party: and herein it will be necessary to revert to the statutory provisions affecting estates for life; and also, in the case of joint-tenancy or tenancy in common, to the law of partition at common law and by statute. *Habendum.*

Rules relating to the habendum.

36. In regard to the *habendum*, there are also two rules which ought to be observed. 1. That it do not contradict, nor be repugnant to nor abridge the estate granted, although it may enlarge the premises. 2. The second rule as to the *habendum* is, that, if the grant be of a freehold interest, the *habendum* must be from the time of the execution of the grant, and not at a future time; therefore in the grant of an estate to a man and his heirs, the *habendum* must not be from "Michaelmas day next." See *Goodtitle v. Gibbs*, 5 B. & C. 709.

Limitations.

37. The limitations which immediately follow the *habendum* serve to declare for whose use it is intended that the grantee should hold the estate; and herein it will be necessary to distinguish whether it be to the use of the grantee himself or to some other person or persons; and herein of reversions and remainders, and how far they are affected by the provisions of the new Statute of Limitations; and herein also of uses and trusts at common law and by statute. As limitations also frequently contain powers and trusts of sale, or of exchange and the like, it will be necessary to examine them minutely, as the validity of the title derived under them rests essentially upon the particular mode of their execution; so where there is a power or trust to sell, the clause (if any) exonerating the purchaser from seeing to the application of the purchase-money, by declaring the receipt of the trustee to be a sufficient discharge, ought to be carefully looked to.

Trusts of accumulation.

38. Under this head it will also be proper to consider the rules against perpetuities and trusts for accumulation at common law and by statute, and the doctrine of executory devises and contingent remainders.

Executory devises, &c.

Conditions.

39. Next to limitations are conditions and provisoes, in respect of which it is necessary to distinguish between conditions precedent, on which estates are sometimes made to commence, and conditions subsequent, which serve to defeat an estate. In the former case care must be taken to see that the condition, or, more properly speaking, the contingency, has happened according to the construction of the words; and, in respect to the latter, it must be seen that the condition is not impossible, insensible, or *malum in se*. Before the 32 Hen. 8, c. 34, such a condition could be reserved only to the grantor or his heirs, but by that act an assignee may take advantage of every condition. As to the time of limitation for bringing an action in case of a condition broken, see 3 & 4 Will. 4, c. 27, ss. 3, 4; Shelford's Real Prop. Stat. pp. 154—162, 6th ed.

Reddendum.

40. The *reddendum* (where there is any) may either precede or follow the limitations. Under this head the conveyancer is led to the consideration of rents, as to the mode of reservation, their different kinds, their recovery and apportionment, &c., and herein also of the statutory provisions on this subject.

Covenants.

41. Where the covenants for title vary from the usual form, the conveyancer will desire to see the exact manner in which they are

framed, in order that he may judge of their legal effect, particularly when there are any exceptions, as in the covenant for quiet enjoyment, excepting a right of way, of fishing, sporting, and the like; so if there be a covenant for the production of title-deeds, it must appear in the abstract, that he may know what title-deeds ought to accompany the title, the covenant for the production of such title-deeds being notice of their contents.

42. Where a deed is to be executed by more than one party, care must be taken to see that it is executed by all the necessary parties, and if it is to be executed in a particular manner, as in pursuance of a power, the conveyancer will require to see that all solemnities have been duly observed, particularly as regards attestation, see *Harkins v. Kemp*, 3 East, 410; *M^cQueen v. Farquhar*, 11 Ves. 467; *Wright v. Wankeford*, 17 Ves. 454; *Doe v. Peach*, 2 M. & S. 276; *Doe v. Pope*, 2 Marsh. 102.

Execution of deed.

Attestation.

43. As the validity of some deeds also depends upon their being enrolled or registered according to different statutes, this will demand no less care and attention than their execution.

Enrolment.

44. Besides what relates to deeds in general, every particular assurance has some points that require to be investigated; as if it be a feoffment, whether there has been livery of seisin; and if it be made by attorney, whether the attorney is duly authorized in writing; and also, whether the feoffor be an infant; and if made before 1834, whether there is a clause of warranty (see 3 & 4 Will. 4, c. 27, s. 39). If it be an exchange, made before the 1st of October, 1845 (see 8 & 9 Vict. c. 106, s. 4), whether it be a common law exchange, having the word "exchange" among the operative words, and a consequent implied warranty; and whether the title to the lands received in exchange, as well as that of the lands given in the exchange, be duly set forth. If an allotment or exchange under an Inclosure Act or other act of parliament, it is necessary to ascertain whether it has the provision giving to the lands received in exchange the precise title which affected the property in lieu of which the allotment or exchange was made; see also as to exchanges in common fields, 6 & 7 Will. 4, c. 115. If it be an award under an Inclosure Act, it is necessary to ascertain the time of its enrolment, and whether it falls within the provisions of the 3 & 4 Will. 4, c. 87; see 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; and 12 & 13 Vict. c. 118; 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31.

Requisites of particular deeds.

Feoffment.

Exchange.

Allotment, &c., under Inclosure Acts.

Where an allotment is made in respect of rights of common appendant or appurtenant to other lands, the title to such lands must be shown, *Major v. Ward*, 5 Hare, 604.

An allotment under an Inclosure Act is no evidence that the person to whom it was made was seised in fee, as such allotments may be

and frequently are made to tenants for life, or other owners of partial estates. Great difficulties, in titles derived through Inclosure Acts, frequently arise from the impossibility of determining in respect of which part of the lands or common rights belonging to the allottee at the time of the inclosure, any given portion of the allotment was made, 7 Byth. by Jarman, 417. Thus if a proprietor have lands derived through five different titles, some copyhold, some leasehold, and some freehold, and five separate allotments are made to him, every part of all the allotments will be subject to the whole of those titles, that is, a purchaser cannot be advised to complete his contract for the purchase of all or any one of the allotments without satisfying himself as to the soundness of all the five titles, for if one title be defective, and an eviction ensue, he cannot ascertain that particular allotment, or part of allotment, which will be recovered, and no prudent purchaser could be advised to pay his money for land surrounded with such uncertainty of possession.

Under the provisions of many Inclosure Acts, the commissioners were required to ascertain the property held by any of the proprietors by different tenures, or in different rights or under different titles, and by the award to make distinct allotments accordingly, and to declare in right of what estates such allotments should have been made.

Power is now given to the inclosure commissioners to distinguish the several tenures of allotments under any local act of inclosure, or the act 6 & 7 Will. 4, c. 115, and the different estates or titles under which the same should be held, and to subdivide aggregate allotments into separate allotments, and to distinguish the tenures or titles thereof, or the lands or rights in respect of which they were respectively made, 8 & 9 Vict. c. 118, s. 152, and see ss. 153—156, and 10 & 11 Vict. c. 111, s. 5. When allotments or exchanges have been made under Inclosure Acts, the lands received upon such allotment or exchange usually become subject by force of the particular act to the title which attached and belonged to the lands in respect of which such allotments or exchanges were made.

The particular act usually contains a provision that it shall not affect any will or settlement, or prejudice any right or claim of dower, jointure, portion, debt, or incumbrance affecting the lands to be allotted, but that every proprietor shall be seised of the allotments to be made to him to the same uses, and subject to the same tenure, wills, jointures, rents and charges, and no other, as the tenements whereof such proprietor was seised, or in respect whereof the allotments are made, would have been subject to, charged with, or affected by, in case the Inclosure Act had not been passed. By the 41 Geo. 3, c. 109, s. 35, and by divers other Inclosure Acts, the award of the commissioners was required to be enrolled in one of the superior courts at Westminster, or with the clerk of the peace of the county where the lands were situated, within certain periods. In a great number of in-

stances such awards had either not been enrolled, or not enrolled within the time limited. The stat. 3 & 4 Will. 4, c. 87, s. 1, on the assumption that by reason of such omission the title to allotments might be considered defective, provided that all awards made before 28th August, 1833, under any Inclosure Act, but not enrolled, should, from the execution thereof, be as valid as if enrolled within the time limited by the act. The proprietors of allotments under any such awards were authorized to cause such awards to be enrolled. A copy of any award so enrolled, signed by the proper officer, is to be delivered to any person requiring the same, on payment of three pence for every sheet of seventy-two words, and such copy is made evidence, 3 & 4 Will. 4, c. 87, s. 2. The act also provided for the appointment of new commissioners in cases where they had not been appointed within the time directed by Inclosure Acts, 3 & 4 Will. 4, c. 87, s. 6.

Inclosure Acts usually contain a provision that allotments in respect of copyholds, or in respect of leaseholds, or in respect of any right of common or any other right appendant or appurtenant to such copyholds or leaseholds, shall be deemed of the same tenure as the tenements, in respect whereof such allotments shall be made, were held at the passing of the act, and that all other allotments should be enjoyed as freehold. See *Doe d. Lewes v. Davidson*, 4 M. & Selw. 175; *Paine v. Ryder*, 24 Beav. 151; *Pochin v. Duncombe*, 1 H. & N. 842. It has been decided that under the Inclosure Act, 8 & 9 Vict. c. 118, gavelkind lands in Kent may be exchanged for lands in Middlesex, held in common socage, *Minet v. Leman*, 7 De G., Mac. & G. 340; 1 Jur., N. S. 692; 24 Law J., Ch. 545.

In purchasing an allotment under an Inclosure Act, it should of course be ascertained that the allotment was authorized by the act, *Casamajor v. Strobe*, 2 Myl. & Kee. 706, and if it be taken in exchange, that the power was pursued, for the commissioners are not at liberty, although they have frequently exercised the power, to throw the old enclosures intended to be exchanged into the general mass, and then to make allotments for the common rights and old enclosures without distinction, *Wingfield v. Sharp*, 10 Barn. & Cress. 785. The exchanges must be distinctly shown to be such on the face of the award, *Cox v. King*, 3 Bing. N. C. 795; see as to exchanges, *Doe v. Neeld*, 3 Mann. & Gran. 271. If there is a partition between coparceners, an abstract of the title of each parcener must be made, and the like when under the Land-Tax Acts the land-tax has been redeemed on different lands held on different tenures.

The existence of lease for a year, comprising all the parcels intended to be released, was formerly essential to the operation of a release of freehold estates. By 4 & 5 Vict. c. 21, s. 1, every release executed after 15th May, 1841, and expressed to be made in pursuance of that

Tenure of
allotments.

Partition.

Lease and re-
lease.

act, was made as effectual as if a lease for a year had been executed. But such release was charged with the stamp duty to which the lease for a year would have been liable. By the 2nd sect. of the same act, the recital or mention of a lease for a year in a release executed before the 18th of May, 1841, is made evidence of the execution of such lease for a year. A lease for a year is rendered unnecessary by the stat. 8 & 9 Vict. c. 106, s. 2, which enacts, that after 1st of Oct. 1845, all corporeal tenements and hereditaments, as regards the conveyance of the immediate freehold thereof, shall be deemed to lie in *grant* as well as in livery, but such grants were made liable to the stamp duty on a lease for a year. The stamp duties on a bargain and sale, imposed by the above acts, were repealed by 13 & 14 Vict. c. 97, s. 6, so far as related to any deed dated after 10th of Oct. 1850. See Shelford's Real Prop. Stat. pp. 586, 590, 6th ed.

Leaseholds.

45. Where the abstract relates to leaseholds it is now settled both at law and in equity, although long questioned, that, if the seller have not protected himself by express stipulation, the purchaser may require to have the title of the original lessor as well as that of the lessee. And where there is a renewable lease, whether the former lease has been surrendered, and herein of the learning of surrender and merger; so where any lease is executed by tenant in tail, by husband and wife in right of the wife, by bishops in right of their churches, or by ecclesiastical corporations, it will be necessary to ascertain that they have been made according to the provisions of the enabling and disabling statutes; so where the vendor of a leasehold is a legatee, it must be shown that the executors have given their assent to the legacy; so where a leasehold is sold subject to an apportioned rent, it must be made to appear how the apportionment has been made.

Where terms of years appear upon the title, it must be considered whether they have ceased under the proviso for cesser (if any) contained in the deed creating them, or whether they come within the operation of the statute as to satisfied terms, 8 & 9 Vict. c. 112. See Shelford's Real Prop. Stat. pp. 600—604, 6th ed.

Fines and recoveries.

46. As to fines, the points to be considered are whether the conusor is competent to levy the fine, and the conusee was capable of taking by a fine, and the deed of declaration of the uses of the fine. Where the fine has been levied by a married woman before 1834, it must be made to appear that she was not within the provisions of 11 Hen. 7, c. 20; also, whether the parcels are the proper subject of a fine, and the proper solemnities have been observed so as to render the fine complete. The necessity of procuring evidence of the proclamations of a fine having been made, is now dispensed with by the stat. 11 & 12 Vict. c. 70. As to a common recovery, some of the points of consideration are—1. The writ of entry on which the recovery has been suffered; 2. The writ to be brought against the tenant of the imme-

diate freehold, called the *tenant to the præcipe*; and, 3. Whether the proper party is vouched, and when the voucher is double, whether he vouched over. The deed making the tenant to the præcipe, and the declaration of the uses of the recovery and the parcels included in the deed, and the subsequent proceedings, must be carefully examined. Assuming the recovery to have suffered in the proper form, it must be considered whether or not all the necessary parties joined; and whether they had such estates and interests in the hereditaments as would pass by that mode of assurance. Regard must also be had to the provisions in the stat. 3 & 4 Will. 4, c. 74, ss. 7—12, for the amendment of fines and recoveries, and for rendering them valid in certain cases.

Since the abolition of fines and recoveries by the stat. 3 & 4 Will. 4, c. 74, the deduction of titles derived from tenants in tail must be considered in reference to the provisions of that act by which other assurances are substituted for them. Where the estates of married women have been the subject of alienation since the abolition of fines and recoveries, attention must be directed to the provisions of the statutes 3 & 4 Will. 4, c. 74, ss. 77—91; 8 & 9 Vict. c. 106, ss. 6, 7; see, also, 20 & 21 Vict. c. 57, as to the power of married women to dispose of reversionary interests in personal estate. It should appear that a certificate of acknowledgment of the deed in question has been enrolled in the Court of Common Pleas.

47. As to wills, it is necessary to consider what might or might not Wills. be devised or bequeathed before and since the new Wills Act, 7 Will. 4 & 1 Vict. c. 26; also what estates might be created, and by what words; also, in case of personalty, whether the will has been proved; and in the case of legacies, it is necessary to ascertain the assent of the executor, and many other points. Wills made before the 1st of Jan. 1838, and not subsequently re-executed or republished or revived by any codicil, must be considered with reference to the law as it stood before the passing of the 7 Will. 4 & 1 Vict. c. 26. Wills coming within the operation of that act must be considered in reference to its provisions and the decisions thereon.

A purchaser of real property, the title to which is derived under a will, is not entitled to have the will established or to have the concurrence of testator's heir in the conveyance to him, unless some reasonable ground exist for doubting the validity of the will, *McCulloch v. Gregory*, 3 Kay & J. 12; see *Grove v. Bastard*, 2 Phill. C. C. 619, 1 De G., Mac. & G. 69; *Ashton v. Wood*, 3 Jur., N. S. 1164.

Where the will has been proved in solemn form, or its validity has been established in a contentious suit, the decree of the Court of Probate, unless there be an appeal, is binding on the persons interested in the real estate of the testator, 20 & 21 Vict. c. 77, s. 62.

48. If the abstract show that the property therein comprised has Mortgages. been subject to any mortgage, since paid off, the title of the person or

persons receiving the mortgage money, and reconveying the mortgaged premises, if different from the original mortgagee, will also have to be deduced from such original mortgagee; and if, as is sometimes the case, the mortgage deed shows that the mortgage money was trust money, it will be necessary to see that the mortgage money when paid off was received by the persons entitled under the trusts, and applied in accordance with such trusts. These observations also apply when the mortgage is still subsisting, and is intended to be paid out of the purchase money.

Copyholds.

49. The foregoing observations in regard to freeholds are, in many respects, applicable to lands of copyhold tenure; but in deducing a title to lands of this tenure, regard must be had to the particular customs of each manor, as affecting the rules of descent, fines, heriots, rents, services, and the rights of freebench and curtesy; also to the customary mode of conveyance by surrender or otherwise; and where there is an enfranchisement, it is necessary that the title of the lord of the manor, as well as of the vendor, should be investigated. As to enfranchisements under the Copyhold Acts, see 4 & 5 Vict. c. 35, s. 64; 15 & 16 Vict. c. 51, ss. 22, 23. The 11th sect. of the last act, which was material, is repealed by 21 & 22 Vict. c. 94.

Incumbrances.

50. It is not usual for the vendor's solicitor to abstract judgments and other incumbrances, not made by deed or will, although it has been decided that no incumbrance ought to be withheld that is likely to affect the title, *Richards v. Barton*, 1 Esp. 269. This, therefore, renders it necessary for the purchaser's solicitor to make a search, which, before the 2 & 3 Vict. c. 11, was made for ten years, but which under that act is now only for five years. The same measure of precaution was and still is, notwithstanding this last-mentioned act, particularly necessary in regard to crown debts.

Accompani-
ments and evi-
dences verify-
ing abstract.

51. Although the abstract may appear upon the face of it to contain all that is sufficient, yet the conveyancer, on the perusal of it, will generally find that evidence of many things are requisite for the deduction of a good title. In considering the proof of documents of title and other facts connected with it, reference must frequently be had to the several learned works on the law of evidence.

The expense of searches for baptismal or other registers, and entries to support the abstract, falls of right on the vendor, and his solicitor usually makes them, but it cannot be supposed that the same care and diligence is always exerted by this party as by an agent more directly and deeply interested in the result. The search should properly be conducted by the solicitor for the purchaser, but it is seldom allowed, and it is observable that the vendor is responsible for the correctness of searches made by his solicitor on the purchaser's behalf, *Dalby v. Pullen*, 3 Sim. 39.

It is to be observed, that it has become the practice of late years to throw the expense of procuring many of the documents necessary for

verifying the abstract upon the purchaser, by the insertion of a special condition of sale to the following effect :—The production and inspection of all deeds, evidences, and muniments of title which are not in the possession of the vendors, and the expenses of all journeys incidental to such production or inspection, and the searching for, procuring and making of all certificates, examined, attested, stamped, office or other copies or extracts of or from any registers, deeds, wills, Chancery proceedings and other documents, and of all declarations or other evidences as to pedigree, identity of parcels, or other matter of title, whether required for the verification of the abstract or for any other purpose not in the possession of the vendors, shall be at the expense of the purchaser requiring the same. Where lands are sold under such a condition, the conveyancer has to exercise a sound discretion as to calling for evidence to authenticate the title.

Births, marriages and deaths are generally proved by examined copies of the parish registers, or by copies duly certified by the officiating minister of the parish. All certified copies given at the general register office shall be stamped or sealed with the seal of the office, and all copies purporting to be so sealed or stamped shall be received as evidence of the birth, death or marriage to which the same relates; but no such copy given in the same office shall be of any force or effect which is not so sealed or stamped, 6 & 7 Will. 4, c. 86, s. 38. But no register of births shall be given in evidence to prove the birth of any child, if it appear that forty-two days have intervened between the day of the birth and the day of the registration of the birth of such child, unless the entry be signed by the superintendent as well as by the district registrar, 6 & 7 Will. 4, c. 86, s. 22. And if it appears that six months have intervened, the register shall not be received in evidence, except in the case of children born at sea, 6 & 7 Will. 4, c. 86, s. 23; and no register of birth or death according to the act of 6 & 7 Will. 4, c. 86, shall be given in evidence which has not been signed by the person professing to be the informant, and to be such party as is therein required to give the information to the registrar, 6 & 7 Will. 4, c. 86, s. 28. Extracts from parish registers, signed by persons describing themselves as “rectors” or “vicars,” have been held sufficient within the stat. 14 & 15 Vict. c. 99, s. 14, but further evidence is requisite if the description is “incumbent” or “curate,” *In re Hall's Estate*, 2 De G., Mac. & G. 748; 9 Hare, (App.) XVI.; 17 Jur. 29; 22 Law J., Ch. 177. An extract from a parish register, signed by the curate of the parish, has been since admitted as evidence, without proof of the signature of the curate, *In re Porter*, 2 Jur., N. S. 349; 25 Law J., Ch. 688.

All extracts from the non-parochial registers deposited in the office of the registrar-general, are to be sealed and stamped with the seal of that office, and may be received in evidence in all *civil* cases, 3 & 4 Vict. c. 92, s. 9. An entry of a marriage in a book of Fleet mar-

Parochial
registers.

Non-parochial
registers.

riages cannot be received as a register, not having been compiled under public authority, *Reed v. Passer*, Peake, N. P. C. 231; *Lloyd v. Passingham*, Coop. C. C. 155. The registers of baptisms and marriages performed at the Fleet and King's Bench prisons, at Mayfair, and at the Mint in Southwark, are not made receivable in evidence by the stat. 3 & 4 Vict. c. 92, s. 20.

Of what registers are evidence.

The register of baptism, under the stat. 52 Geo. 3, c. 146, is not *prima facie* evidence of the age of the person, *Huet v. Le Mesurier*, 1 Cox, 275; *Withen v. Law*, 3 Stark. 63. A register of baptism is not *per se* evidence of the place of birth of the person baptized, but it may be so when accompanied by proof of other circumstances, *Ree v. North Patheston*, 5 B. & C. 508. An entry by a minister in the register book of the baptism of a child which had taken place before he became minister, or had any connection with the parish, and of which he received information from the parish clerk, is not admissible in evidence, nor is the private memorandum of the fact made by the clerk, who was present at the baptism, *Doe d. Warren v. Bray*, 8 B. & C. 818. An examined copy of an entry in a parish register of marriages is receivable in evidence to prove a marriage, although the entry in the register purport to be attested by one witness only, the words "in the presence of" in the entry being followed by one name only, *Doe d. Blayney v. Savage*, 1 Car. & K. 487. A copy of a register of marriage, signed with the name of the person who had been curate of the parish eighty years before the trial, and who signed as curate, was produced by a witness who had been seven years parish clerk, and who said that the same signature, in the same handwriting, appeared in several places of the original register, was held admissible, though no proof was given of the curate's death, and no further proof of his handwriting, *Doe d. Jenkins v. Davies*, 10 Q. B. 315. The entry in the marriage register proves a marriage, but not that the parties married are the persons whose marriage is in question. Some evidence of identity will be therefore necessary, and this may be proved in various other ways, as by some of the persons who officiated at the ceremony, by some person acquainted with the parties who were present at the marriage, or by proof of the handwriting of the parties in the original register.

Declaration of legitimacy, or as to marriage.

Any natural-born subject of the Queen, or any person whose right to be deemed a natural-born subject depends wholly or in part on his legitimacy, or on the validity of a marriage, being domiciled in England or Ireland, or claiming any real or personal estate, situate in England, may apply by petition to the Court for Divorce and Matrimonial Causes, praying the court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring either of the matters aforesaid; or may in like manner apply to such court for a decree declar-

ing that his marriage was or is valid, and such court is to have jurisdiction accordingly, and such decree is to be binding, 21 & 22 Vict. c. 93, s. 1. The decree of the court shall not in any case prejudice any person, unless such person has been cited or made a party to the proceedings, or is the heir-at-law or next of kin, or other real or personal representative of or derives title under or through a person so cited, or made a party; nor shall such sentence or decree of the court prejudice any person if subsequently proved to have been obtained by fraud or collusion, 21 & 22 Vict. c. 93, s. 8.

The certificate of the registrar-general is evidence of a death, 6 & 7 Will. 4, c. 86, ss. 35, 38; *Traill v. Kebblewhite*, 10 Jur. 107; but it may be proved by other means, as the affidavit of a person present at such death, *Tomlins v. Tomlins*, 3 Jur. 167. Evidence of death.

The grant of letters of administration, and a copy of an entry in the registry of the death of an individual, are not sufficient legal evidence of that fact without the production of the affidavit of his death, *Leach v. Leach*, 8 Jur. 211; 13 Law J. (N. S.) Ch. 128; *Thompson v. Donaldson*, 3 Esp. 63; *Moons v. Bernales*, 1 Russ. 307; *Clayton v. Gresham*, 10 Ves. 289. But in practice out of court, letters of administration are generally admitted as evidence of death and intestacy.

Where it is necessary to prove that a person is executor or administrator, the probate of the will or the letters of administration must be produced, *Eldon v. Keddell*, 8 East, 182; *Davis v. Williams*, 13 East, 232; *Pinney v. Pinney*, 8 B. & C. 335; but the Probate Act Book of the Prerogative Court, containing an entry of the will having been proved, and of probate having been granted to the executors therein named, will be admitted as evidence of these persons being executors, without accounting for the non-production of the probate, *Cox v. Allingham*, Jac. 514; *Doe d. Bussett v. Mew*, 7 Ad. & Ell. 240. The Act Book of the Ecclesiastical Court, wherein the order of the court for granting letters of administration is entered, is receivable as evidence of the party being administrator, *Garrett v. Lister*, Leo. 25; *Shepherd v. Shorthose*, 1 Str. 412; Phill. on Ev. An unstamped copy of the Act Book of the Ecclesiastical Court is admissible in evidence under 14 & 15 Vict. c. 99, s. 14, *Dorrell v. Meux*, 15 C. B. 142; 23 Law J., C. P. 221. The probate or office copy of a will is made evidence in suits concerning real estate, unless the validity of the will is disputed, 20 & 21 Vict. c. 77, s. 64. An official copy of the whole or any part of a will, or an official certificate of the grant of letters of administration, may be obtained from the registry or district registry where the will was proved, on payment of the prescribed fees, 20 & 21 Vict. c. 77, s. 69.

Executorship and administration.

Previously to the establishment of the Court of Probate, it was frequently necessary to ascertain that a will affecting leaseholds or Probate in court without jurisdiction.

terms of years had been proved in the proper Ecclesiastical Court. Titles were sometimes defective, on account of a will having been proved, or letters of administration having been granted by an inferior court not having jurisdiction over the place where the land in the term was situated, or in an inferior court having such jurisdiction, when the testator or intestate left other assets out of such jurisdiction, but within the same province in which the land in the term lay, or in a Prerogative Court of one province when the land in the term was within the other province. It is now provided that all grants of probates and administrations made before 11th January, 1858, which may be void or voidable by reason only that the courts from which respectively the same were obtained, had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants, but the act does not make valid any such grants which before that time had been determined by any court of competent jurisdiction to have been void, 20 & 21 Vict. c. 77, s. 86. The judge of the Court of Probate has the same power of amending grants made before 11th January, 1858, as the Ecclesiastical Courts had previously, 21 & 22 Vict. c. 95, s. 17.

Proof of titles
depending on
descents.

Where a title depends on a descent, a pedigree should always accompany the abstract, and this pedigree must be authenticated by satisfactory evidence. It must be borne in mind that any descent which has taken place on the death of any person who died before 1st January, 1834, must be traced according to the old law of descents, and that descents from persons who died after that date must be traced with reference to the stat. 3 & 4 Will. 4, c. 106. A pedigree is usually substantiated by certificates of birth, marriage, and burial, and if there should be any defects in such certificates or other evidence of the pedigree, it should be stated what secondary evidence can be produced to verify the statements in the pedigree, which must be such as may be relied on in a court of justice. When the title depends on a descent which took place at a remote period, as thirty years ago or upwards, to a person who then claimed as heir, and who has ever since been in the uninterrupted enjoyment of the lands, this affords a reasonable presumption that the person who claimed was heir, and supersedes, except under special circumstances, the necessity of further investigation. The recital of very important facts in an old deed cannot always be relied on, for it has been decided that it is not sufficient proof of a descent in a pedigree, for a vendor to set forth deeds which recite the pedigree stated in the abstract, although the deeds containing the recitals be upwards of thirty years old, *Slaney v. Wade*, 1 My. & Cr. 358; *Fort v. Clarke*, 1 Russ. 601. It is also to be observed, that it is often provided, by the conditions of sale, that every deed or other instrument dated thirty years or upwards prior to the day of sale, shall, in the absence of other evidence, be

deemed sufficient evidence of any birth, death, intestacy, heirship, matter of pedigree, fact, matter or thing recited or noticed therein; and frequently such statements and recitals are, by the conditions to be accepted, as full and conclusive evidence of the matters recited or noticed.

In titles under recent descents it should always be seen that the descent has not been interrupted by any testamentary disposition; and in order to show that a person is heir to the ancestor, it is necessary that evidence should be produced of the decease of such ancestor, either wholly intestate, or intestate as to the particular lands in question, the latter fact may be proved by a production of such will; and, if there be no will, the letters of administration to the effects of the owner or owners should be produced, or if it be asserted that no administration has been taken out to his effects, a search for the will should be made in the Ecclesiastical Courts of the several ordinaries to whom the right of granting probate thereof would have belonged, namely, the Prerogative Court, the Diocesan Court, and the Court of the Archdeacon, or any other person having local or peculiar jurisdiction, 2 Prest. Abs. 454. The search for grants of probate of wills and letters of administration made after the 11th January, 1858, will be in the principal registry, or in the district registries, 20 & 21 Vict. c. 77, ss. 66—68. Letters of administration have from constant practice been much relied upon by conveyancers as evidence of intestacy, but they are not conclusive, *Thompson v. Donaldson*, 3 Esp. 63; and in many cases of recent deaths, a prudent purchaser will not implicitly rely upon them, but will require other evidence of intestacy, or make some further inquiry as to the existence of any will, and this is particularly requisite where no letters of administration have been granted.

A recital of a relationship even in a private act has been received by the House of Lords as cogent evidence of a pedigree in a peerage case, because such recital is never inserted in a private act unless its truth has first been ascertained by the judges to whom the bill has been referred, *Wharton Peerage*, 12 Cl. & Fin. 30, 32. But in general a local or private statute, though it contains a clause requiring it to be judicially noticed, is not, as against *strangers*, any evidence of the facts recited, *Brett v. Beales*, M. & M. 421; *Tayler v. Parry*, 1 M. & Gr. 604, 619; *Duke of Beaufort v. Smith*, 4 Exch. 450, 470. A deed was put in, whereby E. S. conveyed the reversion of the property to E. J. It was signed by E. S., described herself as daughter and heiress of J. D., and by E. J., who was an undoubted relation of J. B., and was tenant for life of the property; held, that the signatures were admissible as declarations, notwithstanding the interest which those parties might be supposed to have in E. S. thus representing herself, it not appearing that any dispute had then arisen, *Doe d. Jenkins v. Davis*, 10 Q. B. 314.

Declarations
in support of
pedigrees.

Declarations of deceased members of a family are admissible evidence to prove relationship; as who was a person's grandfather, or whom he married, or how many children he had, or as to the time of a marriage, or of the birth of a child and the like, of which it cannot reasonably be presumed that better evidence can be procured. But a statement or tradition to be admissible must come from persons having such a connection with the party to whom it relates, that it is natural and likely, from their domestic habits and connections, that they are speaking the truth, and that they could not be mistaken, *Whillocke v. Baker*, 13 Ves. 514. In order to admit hearsay evidence in pedigree cases, the person making the declarations must be first proved to have been connected with the family, but it is not necessary to show him to be connected with both the branches of the family touching which his declaration is tendered, *Monkton v. Attorney-General*, 2 Russ. & M. 156. The declarations of parties connected by marriage with those whose pedigree was required to be proved, were admitted, *Doe d. Fuller v. Randall*, 2 M. & P. 20. So the declarations must be made *ante litem motam*: if there be *lis mota*, or any thing which has precisely the same effect upon a person's mind with *litis contestatio*, that person's evidence ceases to be admissible in evidence, *Monkton v. Attorney-General*, 2 Russ. & M. 160. See *Slaney v. Wade*, 1 My. & Cr. 338. One simple form of pedigree, or rather the heads of memoranda furnishing materials for a pedigree, is constantly admitted by every day's practice, as entries in family Bibles or other books kept in the family, a memorandum-book, an old almanac for instance, which is not so much open to all the members of the family as a family Bible is, has upon one occasion been received, but a family Bible is open undoubtedly to the family, which may be one ground of its admissibility; and Lord Mansfield held, that a pedigree is admissible to prove the facts contained in the pedigree if it be hung up in the family mansion, *Goodright v. Moss*, Cowp. 591. A ring worn, publicly stating the date of the person's death whose name is engraved on it, and an inscription upon a tombstone open to all mankind, and erected or supposed to be erected by the family, are also received in evidence, *Monkton v. Attorney-General*, 2 Russ. & M. 162. Where a tombstone or a mural inscription, giving an historical account of a family, had been destroyed twenty-five years ago, evidence was allowed to be given of it by copies made from it whilst it was in existence, *Slaney v. Wade*, 1 My. & Cr. 338. See *Tracey Peckage*, 10 Cl. & Fin. 154. It seems that in a pedigree case statements contained in monumental inscriptions, and hearsay declarations made by a deceased relative, are competent evidence to prove the respective ages of the persons to whom they refer, as well as the fact of their relationship to each other, *Kidney v. Cockburn*, 2 Russ. & M. 167. As to evidence of pedigrees, see also *Davies and Lowndes*, 7 Scott, N. R. 141; *Johnston v. Todd*, 5 Beav. 597; *Robson v. At-*

torney-General, 10 Cl. & Fin. 471; *Gee v. Ward*, 7 Ell. & Bl. 509; *Lloyd v. Wait*, 1 Phill. C. C. 61.

A purchaser who has taken a conveyance from an heir-at-law, by deeds which set forth the pedigree of the vendor, and with which he was satisfied at the time, cannot afterwards by a bill in Chancery require the various books, family Bibles, &c., containing entries which prove the pedigree as recited, to be delivered up or secured for his use; nor can he require a covenant for their production either from the heir or any other person, *Hallett v. Middleton*, 1 Russ. 243.

In ejectment it appeared that the lessor of the plaintiff, to entitle himself to the property as heir-at-law, must deduce title through E. The title relied upon by the defendant was that of a party to whom E. had devised his remainder in the property, which remainder had been devised by J. to E. Among other evidence to identify the property in question with that devised by J., a book was offered in evidence containing entries of receipts of rent of the property in question by a deceased steward of E.; it was held, that the defendant was entitled to produce these entries in evidence against the plaintiffs, each party claiming under or through E. The defendant claimed by purchase from the heir of a devisee under E.'s will. The estate purchased was only a part of the property devised, and to which the steward's entries related. Held, that the defendants, although not entitled to the possession of the book, might insist upon having it produced in evidence as to that part of the property which had come to their hands, *Doe d. Strode v. Seaton*, 2 Ad. & Ell. 173.

Since the statute 5 & 6 Will. 4, c. 62, it has been usual to substantiate the contents of an abstract by declarations made by persons still living, particularly with reference to questions of legitimacy and heirship, the identity of persons and parcels, the names of closes and admeasurements and the like, which are generally deemed sufficient evidence, *Lee on Abstr.* 358. See *post*, tit. "Affidavits."

Statutory declaration.

The proper evidence that land tax has been redeemed is the certificate of the commissioners, or a copy of the register, *Buchanan v. Poppleton*, 27 Law J., C. P. 210.

It frequently happens that the description of the parcels is in such general terms or has been so materially altered by the erection of houses, or by several fields being thrown into one, or one field divided into two or more, as to render it necessary to require satisfactory evidence of the identity of the parcels contained in the prior and subsequent deeds, by the production of assessments to the poor rates or land tax, leases or counterparts of leases, and other contemporary documents, or by a statutory declaration of a person long acquainted with the property. Entries of the receipt of rent in respect of the property in question, contained in a book of a deceased steward, may

Identity of parcels.

be used for the same purpose. See *Doe d. Strode v. Seaton*, 2 Ad. & Ell. 173.

In ejectment to prove that the land in question was part of the estate of the lessor's ancestor, a counterpart of a lease purporting to demise that land was produced from the ancestor's muniment room; it was dated in the ancestor's lifetime, and appeared to be executed by the person named as lessee, but by no one else. The lease itself was not produced, or any excuse shown for the non-production. No privity appeared between the lessee and the defendant in the ejectment; it was held that the counterpart was admissible, *Doe d. Earl of Egremont v. Pulman*, 3 Q. B. 623. Assessment of commissioners of the land tax, by which it appears that at a certain time property was assessed in the name of S. (the family surname only), are evidence to show, in connection with other facts, that at such time the property was occupied by a particular individual of the family, *Doe d. Strode v. Seaton*, 2 Ad. & Ell. 173. But where such assessments were produced to prove seisin in S. S., and the first entries were in the name of T. S., an ancestor, who was dead at the time of such entries, and the others were in the name of Mr. S., and it was proved to be a common practice to continue the name of an ancestor on the assessment books as long as the property continued in the family; the court held, that the entry of Mr. S. was not evidence of a seisin in the individual S. S., *Doe d. Stansbury v. Arkwright*, 2 Ad. & Ell. 182. A map or plan referred to in the deeds may afford sufficient means of identification, but such map or plan is not deemed a necessary part of the abstract, *Blackburn v. Smith*, 2 Exch. 783.

Succession
duty.

It will frequently be necessary to require evidence of the payment of succession duty. The certificate, duly stamped, of the Receiver-General of Inland Revenue, or other proper officer appointed, will be the proper evidence. Every receipt and certificate, purporting to be in discharge of the *whole duty* payable in respect of any succession, will exonerate a *bonâ fide* purchaser for valuable consideration, and without notice, from such duty, notwithstanding any suppression or misstatement in the account upon the footing whereof the same may have been assessed, or any insufficiency of such assessment. See 16 & 17 Vict. c. 51, ss. 51, 52.

ACCOUNTS.

No. I.

No. I.
Allowance.

Allowance of an Account stated.

Obs. This is not an acknowledgment of the receipt of the balance, and therefore does not require a receipt stamp, *Wellard v. Moss*, 1

Bing. 134; *S. C.* 7 Moore, 503. So for the same reason, an account current, when written not upon the receipt of the different sums, but after and only amounting to admissions of money formerly received, does not require a receipt stamp, *Wright v. Shawcross*, 2 B. & A. 502, n.; see further *Acquittance*.

No. I.
Allowance.

We the above-named A. B. and C. D. having carefully examined and compared the above-mentioned account with the several vouchers do approve and allow of the same and do admit that the balance of £ is a just and fair balance As witness our hands this day of 18 .

Witness

E. F.

G.

A. B.

C. D.

—◆—
No. II.

Allowance of an Account stated by a Nominee appointed under the 17 Geo. 3, c. 53, for building or repairing a Parsonage.

No. II.

Under 17 Geo. 3,
c. 53.

Obs. This statement is required to be given under 17 Geo. 3, c. 53, and 21 Geo. 3, c. 86, by the nominee, and must contain an account of the monies advanced and paid by him for the building or repairing the parsonage house and buildings belonging to the living, together with the bills of the several persons employed, which is to be allowed by the ordinary, patron and incumbent. See 1 & 2 Vict. c. 23; c. 106, ss. 62—74.

The following is to be written at the foot of the account:—

We have examined and do hereby approve and allow the above accounts Given under our hands this day of .

A. B. (*Ordinary*.)

C. D. (*Patron*.)

E. F. (*Incumbent*.)

—◆—
ACKNOWLEDGMENTS.

Gen. Obs. Informal instruments serving as mere memoranda may, as a rule, be admitted in evidence, without any stamp. An agreement stamp is necessary only when a paper is evidence of an agreement directly, but not when it is used incidentally, *Wheldon v. Matthews*, 2 Chit. 399. So an acknowledgment of having received money for another does not require a receipt stamp, see *Acquittance*.

Distinction between acknowledgments and agreements, or receipts.



No. III.

Agreement.

No. III.

Acknowledgment that an Agreement entered into by one was on behalf of another.

I hereby acknowledge that an agreement entered into by me bearing date and made &c. was entered into by me for and on behalf of C. D. A. B.



No. IV.

Bill of Exchange.

No. IV.

Acknowledgment of having received a Bill of Exchange for a particular Purpose.

Obs. This may be admitted in evidence without any stamp, *Langdon v. Wilson*, 2 Mann. & Ry. 10, see further, *Acquittance*.

I have received a bill of exchange which I hold as your attorney to recover the value thereof from the parties or to make such arrangement for your benefit as may appear to me in my professional character reasonable and proper.

A. B.



No. V.

Debt.

No. V.

Acknowledgment of a Debt, so as to take the Case out of the Statute of Limitations.

Obs. By the 9 Geo. 4, c. 14, s. 1, no acknowledgment or promise by words only, in an action of debt or on the case, grounded on simple contract, will be sufficient evidence of a new and continuing contract, so as to take the case out of the Statute of Limitations, unless it be in writing, or there be part payment, see *Shelford's Real Prop. Stat.*, pp. 282—293, 6th ed. The 3 & 4 Will. 4, c. 42, s. 5, contains a similar provision in respect to debts on bonds, or other specialties, *Ibid.* 272, 273. By the 3 & 4 Will. 4, c. 27, s. 40, any person's right to money charged on land, or any legacy, may be kept on foot by a written acknowledgment duly delivered to the person interested, or his agent, *Ibid.* 247—249. Acknowledgments which the 9 Geo. 4 requires to be in writing are by s. 8 of the same act exempted from stamp duty.

I do hereby acknowledge that the sum of £ being part of the sum of £ lent to me by C. D. of &c. is still owing and unpaid. A. B.



No. VI.

Acknowledgment of a Debt or Legacy still due, to prevent its being barred by the 3 & 4 Will. 4, c. 27, s. 40.

No. VI.

Debt, &c.

I A. B. of &c. do hereby acknowledge that the sum of £
payable to C. D. (under or by virtue of the will of E. F. bearing
date &c.) is still due and owing by me Witness my hand this
day of 18 . A. B.

No. VII.

Acknowledgment of the Receipt of Deeds.

No. VII.

*Receipt of
Deeds.*

I do hereby acknowledge that the above-mentioned several
deeds papers and writings are left and deposited in my hands in
trust for A. B. and C. D. to be kept as I keep my own goods
and writings and to be produced for the use of either of the said
parties as their respective occasions shall require Witness my
hand this day of 18 . G. H.

No. VIII.

Acknowledgment by a Nominee under 17 Geo. 3, c. 53, of the Receipt of Money borrowed under the Directions of the Act.

No. VIII.

*Receipt of
Money bor-
rowed.*

I A. B. being nominated pursuant to the directions of the
17 Geo. 3 c. 53 to receive and apply the money authorized by
that Act to be borrowed for the purpose of building [or "repairing
&c."] the parsonage-house [or "outbuildings &c."] belonging to
such living do hereby acknowledge to have received from C. D.
the sum of £ being the sum for which a mortgage is to be
made Witness &c. [see *ante*, No. II.]

*Acknowledgment of having received Mortgage Money—see post,
ACQUITANCES.*

No. IX.

Acknowledgment of Writings received by a Mortgagee.

No. IX.

*Receipt of
Writings.*

Received the day of 18 the several deeds papers
and writings mentioned and particularised in the under-written

No. IX.
*Receipt of
Writings.*

schedule which I hereby promise to deliver upon the receipt of £ this day lent and advanced by me to the under-mentioned (*mortgagor*) his heirs or assigns and to keep the same safe and uninjured [loss or damage by fire or other inevitable accidents excepted] Witness &c. C. D.

A schedule of the deeds papers and writings relating to a certain messuage &c. situate &c. the property of A. B. the mortgagor delivered to C. D. for securing the repayment of the sum of £ and interest 17 & 18 May 18 . Indentures of lease and release of these dates the release made between &c.

No. X. (1).
*Title,
(Mortgagor).*

No. X. (1).

Acknowledgment by Mortgagee in Possession of the Mortgagor's Title, so as to take the Case out of the Stat. 3 & 4 Will. 4, c. 27.

Obs. By the 3 & 4 Will. 4, c. 27, s. 28, a mortgagor's right to the equity of redemption may be kept on foot for twenty years by a written acknowledgment given to him or his agent duly authorized, see Shelford's Real Prop. Stat. pp. 223—225, 6th ed.

I do hereby acknowledge that the messuages and premises whereof I am now in receipt of the rents and profits which are comprised in a certain deed of indenture by way of mortgage bearing date &c. and made &c. do belong to the said (*mortgagor*) and on payment of the said sum of £ with interest within months from the day of shall be reconveyed to him.
(*Mortgagee.*)

No. X. (2).
*Title,
(Person).*

No. X. (2).

Acknowledgment of a Person's Title to certain Land, so as to take the Case out of the Stat. 3 & 4 Will. 4, c. 27.

Obs. By the 3 & 4 Will. 4, c. 27, s. 14, when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent, signed by the person in possession or in receipt of the rents and profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed according to the meaning of this Act to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given; and the right of such person shall be deemed to have first accrued at the time of such acknowledgment, or the last of

such acknowledgments, if more than one, see Shelford's Real Prop. Stat., pp. 186—188, 6th ed. No. X. (2).

I do hereby acknowledge that the messuage and hereditaments
at in whereof I am now in possession do rightfully
belong to C. D. the true owner his heirs and assigns.

*Title,
(Person).*

A. B.

—◆—
No. XI.

Acknowledgment by Trustees of the Transfer of Stock upon Trust.

No. XI.
*Transfer,
(Stock).*

We the within-named A. B. and C. D. do hereby acknowledge
that the sum of £ bank stock within mentioned hath been
transferred to and accepted by us upon the trusts within men-
tioned Witness &c.

A. B.

C. D.

—◆—
No. XII.

*Acknowledgment by a Vendor and his Wife of a Deed before the
Lord Mayor of London, indorsed thereon previously to Inrol-
ment in the Lord Mayor's Court, to bar the Wife of Dower.*

No. XII.
Vendor.

Obs. By the common law, a deed acknowledged by the husband
and wife would be inrolled for the husband only, but by the custom it
is otherwise, 2 Inst. 673. A bargain and sale of lands executed by
husband and wife, and acknowledged before the Lord Mayor, or Re-
corder, or an Alderman, and inrolled in the Court of the Hustings,
the wife being previously examined, will be as binding on her as a fine
would have been, Bohun. Priv. Lond. 241; Com. Dig. tit. Lond.
(N); 1 Cru. Dig. 177, 4th ed. By 34 Hen. 8, c. 22, all such con-
veyances before mayors, aldermen, recorders, chamberlains, or other
head officers, as well of the city of London as of other cities, should
be of force, notwithstanding 32 Hen. 8, c. 28. As to acknowledg-
ments by married women in other cases under the new law, see *Dis-
entailing Deeds*.

Be it remembered that on the day of 18 per-
sonally came before me (*Mayor*) Lord Mayor of the City of
London the within-named (*vendor*) and M. (*wife*) his wife and
did then and there severally own and acknowledge the within-
written indenture to be their free and voluntary act and deed
and the said M. being by me the said Lord Mayor privately ex-
amined apart from her said husband did declare her free and
voluntary consent to the said deed and that she executed the same

No. XII.

Vendor.

without fear or force of her said husband or any other person and that at the time she knew the same to be an absolute conveyance of the estate within mentioned to the within-named (*purchaser*) and the said (*vendor*) did also acknowledge the name (*his name*) subscribed to the receipt indorsed upon the said indenture to be his name and handwriting and that he had received the consideration money therein mentioned *In Witness* whereof I the said Lord Mayor have hereunto subscribed my name the day and year above written.

ACQUITTANCES.

- | | |
|---|-------------------------------------|
| 1. <i>Definition.</i> | 4. <i>Effect of an Acquittance.</i> |
| 2. <i>Acknowledgment not a Receipt.</i> | 5. <i>Effect of last Receipt.</i> |
| 3. <i>Form of a Receipt.</i> | 6. <i>Indorsement of Payment.</i> |

Definition.

Sect. 1. An acquittance signifies a release or discharge in writing of a sum of money or debt due. A receipt or discharge given for or upon payment of money, amounting to two pounds or upwards, requires a penny stamp, 16 & 17 Vict. c. 59, sched. The penny stamp may be impressed upon the paper whereon the receipt is written, or an adhesive stamp may be affixed; in the latter case the person giving the receipt is to cancel it by writing thereon his name, or the initial letters of his name, under a penalty of £10, 16 & 17 Vict. c. 59, ss. 3—4.

Acknowledgment not a receipt.

2. A memorandum in these words, "Mr. T. has left in my hands £200," has been held not to require a receipt stamp, which is only necessary where the document has been given for or upon the payment of money, and in discharge of something already due, *Tomkins v. Ashby*, 6 B. & C. 541. A written acknowledgment at the foot of an account, stating that such account is correct, may be given in evidence without a receipt stamp, *Wellard v. Moss*, 7 Moore, 503; 1 Bing. 134.

Form of a receipt.

3. A receipt need be in no particular form to make it liable to a stamp. If a party on receiving payment writes the word "Settled," he is liable to the penalty for giving a receipt without a stamp, *Spanforth, q. t. v. Alexander*, 2 Esp. 621.

Effect of an acquittance.

4. An acquittance, or mere receipt without seal, is only evidence of satisfaction, and not conclusive against the party who signed it, *Stratton v. Rastall*, T. R. 366. But when a man by deed acknowledges himself satisfied, it is a good plea in bar, without receiving anything, *Rowntree v. Jacob*, 2 Taunt. 141; *Baker v. Dewey*, 1 B. & C. 704; *Lampon v. Corke*, 5 B. & Ald. 606; and a court of law

No. XV.

Stock.

No. XV.

Another, where the Consideration is Stock.

Received and accepted the day and year first
 within-written of and from the within-named (*pur-*
chaser) the transfer of the capital sum of £
 reduced bank annuities being the consideration
 within mentioned to be transferred to me. } £
 Reduced
 Annuities.

Witness &c.

No. XVI.

No. XVI.

*Trustees,
(Vendors).**Acquittance from Vendors, being Trustees under a Will, to
Purchasers in equal Moieties.**Obs.* If there are two releases, the receipt must refer to each.

We the within-named A. B. C. D. and E. F.
 parties to the within-written indenture do hereby
 acknowledge to have received on the day of the date
 of the within-written indenture of and from the within-
 named G. H. and I. K. the sum of being the
 full consideration money within mentioned to be by
 them paid to us that is one moiety thereof from the } £
 said G. H. and the other moiety thereof from the
 said J. K. [*If there are two releases add* “And for
 which said sum of £ we have also signed a
 receipt in like manner on the back of another such
 indenture of release as within written.”]

Witness &c.

ADMITTANCES.

No. XVII.

No. XVII.

*Of a new
Tenant.**Admittance of a new Tenant to Copyholds.*

Obs. 1. An admittance to a copyhold is the lord's acceptance of a
 person into the tenancy. Admittance of a tenant for life is the ad-
 mittance of the remainderman where there is no custom to the contrary,
Barnes v. Cook, 3 Lev. 308; *Dean of Ely v. Caldecott*, 8 Bing.
 439. So the admittance of joint tenants is as of one tenant, *Kitch.*
 122; 1 Cov. Watk. Copyh. 338. So also, as it should seem, in the

case of coparceners, 1 Cov. Watk. 339; *Rex v. Lord of the Manor of Bonsall*, 3 B. & C. 173. See Shelford on Copyholds, pp. 101—104, and Suppl. pp. 53—55.

No. XVII.

*Of a new
Tenant.*

2. By the 11 Geo. 4 & 1 Will. 4, c. 65, s. 3, an infant by his guardian or attorney, a feme covert by attorney, and a lunatic by committee, may be admitted to copyholds. If in such cases the fines be not paid within three months after admittance, they may (by s. 6) be demanded by a note in writing, to be signed by the lord of the manor or his steward and left with the guardian of the infant, the feme covert or her husband, and the committee of the lunatic.

3. By the 55 Geo. 3, c. 184, an admittance requires a stamp of £1 Stamp. when the clear yearly value exceeds 20s., but where it shall not exceed that value, a 5s. stamp, and also a further progressive duty of £1 for every entire quantity of 1080 words above the first 1080, and when there is more than one admittance on the same piece of vellum or parchment, the proper duty is to be paid in respect to each. The copy of court roll of any admittance requires the same duty. By the act 13 & 14 Vict. c. 97, upon the *sale or mortgage* of copyhold estates, the stamp duty is reduced to 2s. 6d. upon “any admittance out of court, or the memorandum thereof, or the copy of court roll of any admittance in court,” with a progressive duty of 2s. 6d. for “every entire quantity of 1080 words over and above the first 1080 words.” In cases where the admittance is neither upon a sale or mortgage, the stamp duty imposed by the act of 55 Geo. 3, c. 184, is still payable.

Manor of F. } Be it remembered that on the day of
in the county of . } 18 (*Tenant*) of &c. came in
his proper person (*a*) before me A. B. lord [or “steward”] of the
manor of F. aforesaid and prayed to be admitted to all and singular the customary messuages lands tenements and hereditaments situate lying and being within and parcel of the said manor and all and singular other the premises with the appurtenances thereunto belonging to which said premises the said (*T.*) became entitled as eldest son and heir-at-law of (*I. H.*) deceased late a copyhold or customary tenant of this manor To whom I the said A. B. as lord of the said manor personally granted seisin thereof by the rod (*or* “To whom the lord of the said manor by me his said steward granted &c.”) To hold to him the said (*T.*) and his heirs for ever by copy of court roll at the will of the lord or lords for the time being [*or, if the admittance be by the*

(*a*) Or in the case of an infant, feme covert, or lunatic, “by C. D. of &c. gentleman his [*or ‘her’*] guardian [attorney *or* committee].”

No. XVII.
Of a new
Tenant.

steward, say in the common form “at the will of the lord”} according to the custom of the said manor by the several yearly rents and services therefore due and of right accustomed *And* the said (*T.*) gave to the lord for his fine £ but the fealty of the said (*T.*) was respited (*a*) *And* so saving to the lord his right the said (*T.*) was admitted tenant to the said premises in manner and form aforesaid.

In the } S. S.
presence of } R. R.

A. B. lord [*or*
“steward”] &c.



No. XVIII.
Admittance out
of Court.

No. XVIII.

Form of Admittance out of Court, by the Steward, of a Devisee in Fee (b).

The manor of } Be it remembered that on the
in the county of } day of in the year of our Lord
B. N. of &c. came before J. S. steward of the said
manor out of court that is to say at his dwelling-house situate
&c. and produced and delivered to the said steward a copy of
the last will and testament of C. O. late of &c. deceased
whereby he the said C. O. devised all his customary or copyhold
hereditaments lying within and holden of the said manor by the
description of &c. unto the said B. N. his heirs and assigns
for ever according to the custom of the said manor and the
said B. N. by virtue of the provisions contained in the Copyhold
Act 1841 prayed to be admitted to all and singular the custo-
mary or copyhold hereditaments lying within and holden of the
said manor so devised to him by the said C. O. as aforesaid to
wit to All &c. with their appurtenances (and to which same
hereditaments and premises the said C. O. was admitted at a
general court held in and for the said manor on the day
of) *To which* said B. N. the lord of the said manor by the
said steward granted seisin thereof by the rod *to have and to*
hold all and singular the said hereditaments and premises
with their appurtenances unto the said B. N. and his heirs to

Exception.

(a) Where in the case of an infant, feme covert or lunatic, the fines are not paid on admittance, then omit this clause, and add “and so saving” &c.

(b) See Scriven on Copyholds, p. 523.

be holden of the lord by copy of court roll at the will of the lord according to the custom of the said manor by fealty suit of court the ancient annual rent or rents heriots when they shall happen and other the duties and services therefore due and of right accustomed and so (saving the rights of the lord) the said B. N. is by the said steward admitted tenant thereof and pays to the lord on such his admittance a fine certain of £ and his fealty is respited.

No. XVIII.
*Admittance out
of Court.*

J. S. steward.

AFFIDAVITS, AFFIRMATIONS, OR DECLARATIONS.

- | | |
|--|---|
| 1. <i>Affirmations by Quakers, Moravians, and Separatists.</i> | 6. <i>Affidavits exempt from Stamp Duty or otherwise.</i> |
| 2. <i>Declarations substituted for Oaths and Affidavits.</i> | 7. <i>Affidavits in Courts of Common Law.</i> |
| 3. <i>Oaths, &c., to be taken in Court.</i> | 8. <i>Affidavits in Court of Chancery.</i> |
| 4. <i>Voluntary Oaths abolished.</i> | 9. <i>Affidavits in Court of Probate.</i> |
| 5. <i>Voluntary Declaration may be taken.</i> | |

Seet. 1. By the 3 & 4 Will. 4, c. 49, amending and extending the 8 Geo. 1, c. 6, and 6 Geo. 3, c. 53, Quakers and Moravians are permitted to make a solemn affirmation or declaration instead of an oath or affidavit in all cases where an oath is required, and falsely affirming is made punishable as perjury. By 3 & 4 Will. 4, c. 82, a similar provision is extended to a description of dissenters called Separatists. See 1 & 2 Vict. c. 77. By the Common Law Procedure Act, 1854, if any person called as a witness, or requiring or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, the court or judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, may permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following, *videlicet*:—"I A. B. do solemnly sincerely and truly affirm and declare that the taking of any oath is according to my religious belief unlawful and do also solemnly sincerely and truly affirm and declare &c.," which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form, 17 & 18 Vict. c. 125, s. 20. The last provision is extended to the Court of Probate, 20 & 21 Vict. c. 77, s. 27, and to the Divorce Court, 20 & 21 Vict. c. 85, s. 49.

Affirmations by
Quakers and
Moravians.

Separatists.

Affirmations in
other cases.

<u>Affidavits.</u>	Persons making false affirmations are liable to punishment for perjury, 17 & 18 Vict. c. 125, s. 21; 20 & 21 Vict. c. 77, s. 27, c. 85, s. 50.
Declarations substituted for oaths and affidavits.	2. By the 5 & 6 Will. 4, c. 62, provisions are made for abolishing oaths, affidavits and affirmations; by (s. 2) in all official matters relating to the excise, customs, &c.; by (s. 9) in the case of churchwardens and sidesmen; by (s. 10) in the case of persons acting in turnpike trusts; by (s. 11) in taking out a patent; by (s. 12) in the case of pawnbrokers; by (s. 14) in transferring stock.
Oaths, &c., to be taken in court.	3. By (s. 7) of the last-mentioned statute, oaths and affirmations are to be administered, taken and made as before in all judicial proceedings in courts, or in any proceedings before magistrates by way of summary conviction.
Voluntary oaths abolished.	4. By (s. 13) of the same statute, justices of the peace are not to administer or receive voluntary oaths or affidavits touching matters whereof they have no jurisdiction by statute.
Voluntary declaration may be taken.	5. The 18th section of the act recites that it may be necessary and proper in many cases, not therein specified, to require confirmation of written instruments or allegations or proof of debts, or of the execution of deeds or other matters; and enacts, that any justice of the peace, notary public or other officer by law authorized to administer an oath, may take and receive the declaration of any person voluntarily making the same before him, in the form in the schedule to that act annexed, and if any declaration so made shall be false or untrue in any material particular, the person wilfully making such false declaration shall be deemed guilty of a misdemeanor.
	By the 12 & 13 Vict. c. 106, s. 246, bankrupts and the wives of bankrupts are to be examined before commissioners in bankruptcy without being sworn, after making and signing the declaration in the schedule W. to that act annexed. By the 25th section of that act, persons making false statements in the course of the examination are made liable to the penalties for perjury.
Affidavits exempt from stamp duty or otherwise.	6. By the 55 Geo. 3, c. 184, affidavits not made for the immediate purpose of being filed or used in any court of law or equity, are liable to the stamp of 2s. 6d. for every sheet, or piece of paper, parchment or vellum, on which the same shall be written or authorized by law. See 4 & 5 Vict. c. 34. Affidavits relating solely to matters in bankruptcy are not liable to any stamp duty, 12 & 13 Vict. c. 103, s. 138.
Affidavits in Courts of Common Law.	7. Every affidavit to be used in any cause or civil proceeding in any of the superior courts of common law shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially de-

parting from this rule, Gen. R. H. T. 1853, No. 2. The addition and true place of abode of every person making an affidavit shall be inserted therein, *Ibid.*, Rule 138; see Chitty's Q. B., 9th ed., pp. 1512—1530.

8. Every affidavit which includes an affirmation, to be used in the Court of Chancery, shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject, 15 & 16 Vict. c. 86, ss. 37—66. All affidavits in Chancery are to be taken and expressed in the first person of the deponent. Any solicitor, party or person filing an affidavit not taken and expressed in the first person of the deponent is not to be allowed the costs of preparing and filing such affidavit in any taxation of costs; Gen. Orders, 8th of May, 1845, Nos. 126, 123; see Smith's Ch. Pr., pp. 407—414, 6th ed.; Forms of Affidavits in Chancery, *Ibid.*, pp. 935—966. The persons formerly styled Masters Extraordinary in Chancery have ceased to be so styled, and they and all persons appointed after the 15th of August, 1853, by the Lord Chancellor, to execute like duties in England, are designated "Commissioners to administer Oaths in Chancery in England," and to possess and exercise all such powers and discharge all such duties as then appertained to the office of Master Extraordinary in Chancery, by virtue of any statute or order of the Court of Chancery or of the Lord Chancellor, or usage in that behalf or otherwise, 16 & 17 Vict. c. 78, s. 1. The Lord Chancellor from time to time may appoint any persons practising as solicitors within ten miles from Lincoln's Inn Hall, at their respective places of business, to administer oaths and take declarations, affirmations and attestations of honour in Chancery, who are to possess all such other powers and discharge all such other duties as aforesaid, and such persons are styled "London Commissioners to administer Oaths in Chancery," and are entitled to charge and take a fee of one shilling and sixpence for every oath administered by them, and for every declaration, affirmation or attestation of honour taken by them, subject to any order of the Lord Chancellor, varying or annulling the same, 16 & 17 Vict. c. 78, s. 2.

9. The addition and true place of abode of every person making an affidavit in the Court of Probate is to be inserted therein. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat. No affidavit will be admitted in any matter depending in the Court of Probate in the jurat of which there is an interlineation or erasure. A further order has been made, 19th October, 1858, that no affidavit will be admitted in any matter depending in the Court of Probate of which any material part is written on an erasure. Where an affidavit is made by any person who is blind, or who from his or her signature or otherwise appears to be illiterate, the registrar [*or*

Affidavits.

Affidavits in
Court of
Chancery.

Affidavits in
Court of Pro-
bate.

Affidavits. *district registrar*], commissioner, or other person before whom such affidavit is made, is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same; and also, that the said party made his or her mark or wrote his or her signature in the presence of the registrar [*or district registrar*], commissioner, or other person before whom the affidavit was made. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor or attorney, or before a clerk of his proctor, solicitor or attorney. Proctors, solicitors or attorneys, and their clerks respectively, if acting for any other proctors, solicitors or attorneys, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting, see Rules for the Principal Registrars, Nos. 46—51, and for District Registrars, Nos. 61—66; see similar Rules as to Affidavits for the Court for Divorce and Matrimonial Causes, Nos. 49—54.

The following further orders, 19th Oct., 1858, have been made:—
1. In every case where an affidavit is required from a subscribing witness to a will or codicil, such subscribing witness shall in such affidavit depose as to the mode in which the said will or codicil was executed and attested. 2. The draft oaths to lead grants of special or limited probate or administration, with or without the will annexed, are to be transmitted by the district registrar to the registrars of the principal registry in order to their being settled, and no such special or limited grant is to be issued until the draft oath to lead the same has been settled by a registrar of the principal registry.

The registrars and district registrars respectively of the Court of Probate have full power to administer oaths, and all persons who, on the 11th Jan., 1858, were acting as surrogates of any ecclesiastical court, and any other persons whom the judge of that court shall, under the seal of the court, appoint, shall have power to administer oaths, &c., and the persons so appointed are styled “Commissioners of her Majesty’s Court of Probate,” 20 & 21 Vict. c. 77, s. 27.

No. XIX.

No. XIX.
Arbitration
(*Deed of Sub-*
mission).

Affidavit of the Execution of Deed of Submission to Arbitration.

Obs. Before an award can be enforced under 9 & 10 Will. 3, c. 15, the submission must be made a rule of court, for which purpose there must be an affidavit of the execution of the deed of submission by one of the witnesses; and where there are several parties to the deed, it must be shown that all have executed the deed, *Antram v. Chace*,

15 East, 209; and see *Biddel v. Dorset*, 6 B. & C. 255. As to the exemption from the stamp duty, see Pref. 6. See *post*, tit. "Arbitration."

No. XIX.
Arbitration
(*Bond of Sub-*
mission).

In the Q. B. [*or other court of which the submission is to be made a rule.*]

I A. B. of &c. make oath and say that on the day of in the year of our Lord 18 I was present and did then see C. D. duly execute the bond [*or "agreement" as the case may be*] hereunto annexed marked A. and that the said C. D. did then sign and seal and as his act and deed deliver the said bond in my presence and that the name C. D. set and subscribed thereto is of the proper handwriting of the said C. D. and that the name A. B. subscribed to the said bond as the witness thereof is of my proper handwriting.

Sworn &c.

A. B.

—◆—
No. XX.

Affidavit of the Execution of Articles of Clerkship (a).

Obs. 1. This affidavit must be made and filed within six months of the execution of the articles, and the articles must be registered. If the affidavit is not filed within six months, the service will be reckoned from the day of filing the affidavit, unless otherwise ordered by the court, 6 & 7 Vict. c. 73, ss. 8, 9.

No. XX.
Articles of
Clerkship,
(*Execution*).

In the Q. B. [*or "C. P." or "Exch. of Pleas."*]

I A. B. of gentleman make (*b*) oath and say

1. That by articles of clerkship bearing date the day of in the year of our Lord one thousand eight hundred and fifty made between A. A. gentleman one of the attornies of her Majesty's Court of Queen's Bench [*or "Common Pleas" or "Exchequer of Pleas"*] at Westminster of the one part and C. C. of and D. C. of son of the said C. C. of the other part The said D. C. for the con-

(a) This affidavit is required by the 6 & 7 Vict. c. 73, ss. 8, 10.

(b) Where the articulated clerk has graduated at Oxford, Cambridge, Dublin, London or Durham, he should join in the above affidavit, or make a separate one, and state "That I have taken the degree of bachelor of arts [*or "bachelor of laws"*] in the University of and that I took such degree within six [*or "eight"*] years next after the day when I was matriculated in the said University and that the articles of clerkship bearing date the day of and made between &c. were made within four years next after the day when I took such degree." See 6 & 7 Vict. c. 73, s. 7.

No. XX.
Articles of
Clerkship,
(Execution.)

sideration therein mentioned did by and with the consent of the said C. C. put place and bind himself clerk to the said A. A. to serve him in the business profession and practice of an attorney at law [and solicitor in Chancery] from the day of the date of the said articles for the term of five years thence next ensuing and fully to be complete and ended And which said articles were in due form of law executed by the said A. A. C. C. and D. C. on the day of one thousand eight hundred and fifty [or "on the day of the date thereof"] in my presence and of one F. F. and that the name W. W. set and subscribed to the said articles as a witness to the due execution thereof is my handwriting and that the name F. F. also set and subscribed to the said articles as a witness to the due execution thereof is the proper handwriting of the said F. F.

2. That the said A. A. at the time of the execution of the said articles was and still is duly admitted an attorney of the said Courts of Q. B. C. P. and Exch. and a solicitor in the said Court of Chancery. [*If not an attorney of all the Courts or not a solicitor in Chancery alter this accordingly.*]

Sworn this day of 185

Before me A. B.



No. XXI.

No. XXI.
Assignment of
Articles.

Affidavit of Execution of Assignment of Articles of Clerkship.

In the

I W. W. of &c. make oath and say—

1. That by an assignment of articles of clerkship bearing date the day of in the year of our Lord one thousand eight hundred and made between A. A. one of the attornies of her Majesty's Court of Queen's Bench Common Pleas and Exchequer of Pleas at Westminster and a solicitor of the High Court of Chancery of the first part C. C. of D. C. (*the clerk*) son of the said C. C. of the second part and E. F. of gentleman one of the attornies of her Majesty's said Courts and a solicitor in the High Court of Chancery of the third part After reciting certain articles of clerkship bearing date the day of one thousand eight hundred and and made between the said A. A. of the one part and the said C. C. and D. C. of the other part the said D. C. did by and with the consent of the said C. C. put place

and bind himself clerk to the said A. A. for the term of five years thence next ensuing and fully to be complete and ended It was witnessed that the said A. A. did at the request of the said C. C. and D. C. assign transfer and set over unto the said E. F. the services of the said D. C. for all the rest residue and remainder then to come and unexpired of the said term of five years And the said D. C. did with the consent of the said C. C. and for the consideration therein mentioned put place and bind himself clerk to the said E. F. to serve him in the profession of an attorney at law and solicitor in Chancery from the day of the date of the said assignment of articles for the remainder of the said term and which said assignment of articles was in due form of law executed by the said A. A. C. C. D. C. and E. F. on the day of one thousand eight hundred and

No. XXI.
*Assignment of
Articles.*

2. And I further say that I was present on the said day of one thousand eight hundred and and did see the said A. A. C. C. D. C. and E. F. duly sign seal and deliver the said assignment of articles and that the names or signatures A. A. C. C. D. C. and E. F. set and subscribed thereto are in the proper handwriting of the said A. A. C. C. D. C. and E. F. and that the name or signature W. W. written at the foot of the said assignment of articles as a witness attesting the execution thereof is in my own handwriting.

Sworn &c.

W. W.

—◆—
No. XXII.

*Affidavit of Service of Clerkship (a), and of having given the
Notices of Admission.*

No. XXII.
*Service of
Clerkship and
Notices.*

Obs. This and the following affidavit are sworn before a judge at chambers. To this affidavit the articles and assignment (if any) must be annexed, with an exhibit indorsed thus:—"These are the articles of clerkship [and assignment (if any)] referred to in the annexed affidavit of A. B., sworn before me the day of 185 " The affidavit of due execution of the articles which was filed in the Master's Office within six calendar months of their execution must be procured, and all these documents, together with the examiner's certificate, are taken to the clerk at the judges' chambers,

(a) See 6 & 7 Vict. c. 73, s. 11.

No. XXII.
*Service of
 Clerkship and
 Notices.*

whereupon the judge grants his fiat for the admission, and the clerk retains the articles and assignment (if any), and the affidavits as to due service and of giving the notices. Wharton's Manual for Articled Clerks, p. 664, 8th ed.

In the Q. B.

I of gentleman make oath and say

1. That I have actually and really served and was employed by of gentleman one of the attornies of her Majesty's Courts of Queen's Bench Common Pleas and Exchequer of Pleas at Westminster and a solicitor of the High Court of Chancery as his clerk in the practice of an attorney and solicitor from the day of the date of certain articles of clerkship made between the said and and me this deponent bearing date the day of in the year 18 *for the full term of five [or "three"]* years pursuant to the articles hereunto annexed [*where there has been an assignment omit the words in italics and add*] until the day of in the year 18 being the full term of years months and days.

2. That I was duly assigned for the remainder of the said term of five years unto of one other of the attornies of her Majesty's Court of Queen's Bench Common Pleas and Exchequer of Pleas at Westminster and a solicitor of the High Court of Chancery and that I have actually and really served and been employed by the said as his clerk in the practice of an attorney and solicitor from the day of the date of certain articles of assignment made between the said and bearing date the day of in the year 18 being the full term of years months and days pursuant to the said articles of assignment hereunto annexed.

If any part of the time have been served with a barrister or special pleader add that by virtue and under the authority of the statute in that case made and provided I have actually and *bouâ fide* been and continued as pupil and as such been employed by W. W. of Esq. from the day of 18 to the day of 18 inclusive being a period of months and days and that the said W. W. during the term of such last-mentioned service was a practising barrister [*or "a person bouâ fide practising as a certificated special pleader"*] in England [*or "Wales"*] and that I have actually and really served and been employed as clerk for the full term of five [*or "three"*] years pursuant to the said articles of clerkship [*and assignment*] above mentioned.

3. That I did before the commencement of term now last past enter in the two books kept for that purpose at the chambers of each of the judges of this Honorable Court a notice in writing purporting that E. D. of whose place [*or* “places”] of abode [*or* “service”] for the last preceding twelve months has [*or* “have”] been as follows [*or* “follow”] and who is now [*or* “lately was”] under articles of clerkship to A. B. of attorney-at-law [and which articles were assigned to F. G. of attorney-at-law] intended to apply in the then next term to be admitted an attorney of her Majesty’s Court of Queen’s Bench at Westminster and that I did also three days at least previous to the said term leave a like notice with a clerk to the masters of this Honorable Court containing in addition to the particulars stated in the aforesaid other notices the place [*or* “places”] of abode [*or* “service”] of me this deponent for the last preceding twelve months.

4. That if the said notices or any or either of them were or was afterwards cancelled or defaced it was done without my privity or consent.

Sworn &c.

(Signed)

No. XXIII.

Affidavit of the Payment of the Stamp Duty.

In the Q. B.

I of in the county of gentleman make oath and say

1. That the stamp duty of eighty pounds was paid in respect of certain articles of clerkship bearing date the day of 18 and made between of in the county of gentleman one of the attornies of her Majesty’s Courts of Queen’s Bench Common Pleas and Exchequer at Westminster and a solicitor of the High Court of Chancery of the one part and of in the county of and me this deponent of the other part as appears by the stamp impressed thereon and that the said articles were duly executed by the respective parties thereto on the day of the date thereof and were duly registered on the day of then next as appears by the certificate of the proper officer indorsed thereon.

2. That the stamp duty of one pound fifteen shillings was

No. XXII.

*Service of
Clerkship and
Notices.*

No. XXIII.

*Articles
(Payment of
Stamp Duty).*

No. XXIII. paid in respect of a certain assignment of the said articles bearing date the day of 18 and made between the said of the first part the said and me this deponent of the second part and of in the county of gentleman one other of the attornies of her Majesty's Courts of Queen's Bench Common Pleas and Exchequer at Westminster and a solicitor of the High Court of Chancery of the third part as appears by the stamp impressed thereon and that the said assignment was duly executed by the respective parties thereto on the day of the date thereof and was duly registered on the day of then next as appears by the certificate of the proper officer indorsed thereon.
Sworn &c.

(Signed)

No. XXIV.

No. XXIV.
Bill of Sale
(*Execution of*).

Affidavit of Execution of Bill of Sale.

In the Q. B.

I make oath and say

1. That I was present on the day of one thousand eight hundred and fifty and did see (*assignor*) who is an auctioneer (*a*) and resides at execute a certain indenture or bill of sale of personal chattels of the said (*assignor*) bearing date the day of one thousand eight hundred and fifty and made between the said (*assignor*) of the one part and (*assignee*) of &c. of the other part a true copy of which said indenture or bill of sale and of every schedule or inventory thereto annexed or therein referred to and of every attestation of the execution thereof is hereunto annexed and that the said (*assignor*) did then in my presence seal and as his act and deed deliver the said indenture or bill of sale and that the same was made or given by the said (*assignor*) to the said (*assignee*) on the day of one thousand eight hundred and fifty

2. And I further say that the name or signature written

(*a*) Under the Act 17 & 18 Vict. c. 36, the occupation of the attesting witness, as well as that of the assignor, should duly be described in the affidavit on registry, and an attorney, or an attorney's clerk, long known as such, is not duly described merely by the term "gentleman," without the mention of his profession, *Tuton v. Samoner*, 27 Law J., Exch. 293. See *Allen v. Thompson*, 25 L. J., Exch. 249; 1 Hurl. & N. 15.

at the foot of the said indenture or bill of sale is of the proper handwriting of the said (*assignor*) and that the name or signature subscribed to the said indenture or bill of sale as the attesting witness to the execution thereof is my own handwriting and that I am an attorney at law and reside at

3. And I further say that the execution of the said indenture or bill of sale was _____ witnessed by _____
Sworn

No. XXIV.
Bill of Sale
(*Execution of*).

If attested by deponent only, state that fact; if by another witness also, insert his name, residence and occupation.

—◆—
No. XXV.

Affidavit for Order to enter Satisfaction on Registry of Bill of Sale.

No. XXV.
Bill of Sale
(*Satisfaction of*).

In the

I _____ of _____ in the _____ of _____ make oath and say
1. That the debt or sum of _____ for which _____ who was then an auctioneer and resided at _____ in the _____ of _____ executed a certain indenture or bill of sale of personal chattels of the said _____ bearing date the _____ day of _____ one thousand eight hundred and _____ and made between the said _____ of the one part and _____ of the other part a true copy of which said indenture or bill of sale was on the _____ day of _____ one thousand eight hundred and _____ filed with the officer acting as the clerk of the dockets and judgments in the Court of Queen's Bench pursuant to the statute in that case made and provided hath been fully paid and satisfied by the above named _____ to the above named _____

2. That I was present on the _____ day of _____ one thousand eight hundred and _____ and did see _____ attorney for the above named _____ sign the consent to an order indorsed on the summons hereunto annexed to show cause why a memorandum of satisfaction of the aforesaid debt or sum of _____ should not be entered on the registry of the said indenture or bill of sale.

3. That the name _____ set and subscribed to the said consent is in the proper handwriting of the said _____
Sworn at _____ the _____ day of _____ 18 _____

Before me

No. XXVI.

No. XXVI.
Judgment Debt
(Payment of).

Affidavit of Payment of Judgment Debt.

In the C. P.

Between [*parties to action*].

I of in the of make oath and say

1. That the two several sums of for debt and for costs for which judgment was signed in this cause on the day of one thousand eight hundred and and registered with the Senior Master of the Court of Common Pleas pursuant to the statute in that case made and provided charging the estate of the said defendant have been fully paid and satisfied by the above-named defendant to the above-named plaintiff.

2. That I was present on the day of one thousand eight hundred and fifty and did see attorney for the above-named plaintiff sign the consent to an order endorsed on the summons hereunto annexed to show cause why a memorandum of satisfaction of the aforesaid judgment should not be entered on the registry.

3. That the name set and subscribed to the said consent is in the proper handwriting of the said

Sworn at this day of 185

Before me



No. XXVII.

No. XXVII.
Certificate
(verifying).

Affidavit verifying Certificate of Acknowledgment made by a Married Woman.

Contents of the
 affidavit.

Obs. 1. By R. G. H. T. 4 Will. 4, 1834, revoking and amending the Rules of Michaelmas Term, 1833, the following affidavit, except where the acknowledgment is taken elsewhere than in *England, Wales, or Berwick-upon-Tweed*, is directed to be made by some practising attorney or solicitor of one of the Courts at *Westminster*, or of one of the Counties Palatine of *Lancaster* or *Durham*, and in all cases it shall be deposed, in addition to the verification of the said certificate, that the deponent [*or if more than one person join in the affidavit, "that one or more of the deponents"*] knew the person or persons making such acknowledgment, and that at the time of making such acknowledgment the person or persons making the same was or were of full age and competent understanding: and that one at least of the commissioners taking such acknowledgment, to the best of his knowledge and belief, is not in any manner interested in the transaction

giving occasion for the taking of such acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent, so interested or concerned; and that the names and residences of the said commissioners, and also the place or places where such acknowledgment or acknowledgments are taken, shall be set forth in such affidavit; and that previously to such acknowledgment being taken, the deponent had inquired of such married woman [*or if more than one*, "of each such married women"] whether she intended to give up her interest in the estate to be passed, and also the answer given thereto; and where any such married woman, in answer to such inquiry, declares that she intends to give up her interest without any provision, the deponent shall state that he has no reason to doubt the truth of such declaration, and verily believes the same to be true. And where any provision has been agreed to be made, the deponent shall state that the same has been made by deed or writing, or if not actually made before, that the terms of the intended provision have been reduced into writing; which deed or writing he verily believes has been produced to the said judge ["master," *or* "commissioners"].

No. XXVII.

*Certificate
(verifying).*

2. AND IT IS HEREBY FURTHER ORDERED, that every affidavit shall state the parish or several parishes, or place or several places, and the county or counties, in which the several premises, wherein any such married woman appears to be interested, shall by deed be described to be situate.

Affidavit must state parish or places and county.

3. AND IT IS HEREBY FURTHER ORDERED, that the affidavit shall be in the form hereunto annexed, subject to such variations as the circumstances of the case render necessary, or such affidavit may be made, where it is found convenient, by one of the said commissioners, with such variations in the form thereof as shall be necessary in that behalf. As to alienation by married women, see 3 & 4 Will. 4, c. 74, ss. 77—91; 8 & 9 Vict. c. 106, ss. 6, 7; 20 & 21 Vict. c. 57; *Shelford's Real Prop. Stat.* pp. 377—413, 6th ed.

Form of affidavit.

4. Affidavits of this description do not require to be stamped; see 4 & 5 Vict. c. 34. The fee for an acknowledgment of a married woman before a judge at chambers is 10s., Order M. T. 1852, 1 Ell. & Bl. 261; and before a county court judge 1*l.*, 19 & 20 Vict. c. 108, sched. C.

Stamp and fees.

In the Common Pleas.

A. B. (*a*) of &c. in the county of gentleman one of the
attornies [*or* "solicitors"] of the Court of maketh oath and

(*a*) Where more than one join in the affidavit, "A. B. of &c. in the county of [*here state trade, profession or calling,*] and C. D. of in the county of gentleman one of the attornies [*or* 'solicitors'] of the Court of severally maketh oath and say and first this deponent A. B. for himself maketh oath and saith that he knows M. the wife of R. L."

No. XXVII.
Certificate
(verifying).

saith that he knows M. the wife of R. L. (a) in the certificate hereunto annexed mentioned and that the acknowledgment therein mentioned was made by the said M. L. and the certificate signed by the judge [or "master" or "A. B. of &c. and C. D. of &c. the commissioners in the said certificate mentioned"] on the day and in the year therein mentioned at in the county of in the presence of this deponent and that at the time of making such acknowledgment the said M. L. was of full age and competent understanding and that the said M. L. knew the said acknowledgment was intended to pass her estate in the premises respecting which such acknowledgment was made (b) And this deponent further saith that previous to the said M. L. (c) making the said acknowledgment he this deponent inquired of the said M. L. whether she intended to give up her interest in the estates in respect of which such acknowledgment was taken without having any provision made for her in lieu of or in return for or in consequence of her so giving up her interest in such estates And that in answer to such inquiry the said M. L. (d) declared that she did intend to give up her interest in the said estates without having any provision made for her in lieu of or in return for or in consequence of her so giving up such her interest of which declaration of the said M. L. (e) this deponent has no reason to doubt the truth and verily believes the same to be true (f) And lastly this deponent saith that it appears by the deed acknowledged by the said M. L.

(a) If more than one married woman, "and L. the wife of R. S."

(b) When the acknowledgment is not taken by a judge or master, add "And this deponent further saith that to the best of this deponent's knowledge and belief neither of the said commissioners is [or 'the said A. B.' or 'the said C. D. one of the said commissioners is not'] in any manner interested in the transaction giving occasion for such acknowledgment or concerned therein as attorney solicitor or agent or as clerk to any attorney solicitor or agent so interested or concerned."

(c) If more than one married woman, say, "the said M. L. or L. S. making this acknowledgment he this deponent inquired of each of them the said M. and L. whether she" &c.

(d) Or "each of them the said M. L. and L. S. declared" &c.

(e) Or "of each of them the said M. L. and L. S."

(f) Or "declared that a provision was to be made for her in consequence of her giving up such her interest in the said estates And this deponent further saith that before her acknowledgment was so taken he was satisfied and does now verily believe that such provision has been made by deed or writing [or 'that the terms thereof have been reduced into writing'] And that such deed or writing has been produced to the said Judge [or 'Master' or 'Commissioners']."

that the premises wherein she is stated to be interested are described to be in the parish or place [or "parishes or places"] of _____ in the county [or "counties"] of &c. [as the case may be].

No. XXVII.
Certificate
(verifying).

See other forms of affidavits, Shelford's Real Prop. Stat. App. pp. xi.—xv. 6th ed.

—◆—
No. XXVIII.

Affidavit of the Execution of the Memorial of a Deed by one of the Witnesses.

No. XXVIII.
Execution of
Deeds.

Obs. 1. This affidavit is required by the 2 & 3 Ann. c. 4, for the West Riding of Yorkshire; 5 & 6 Ann. c. 35, for the East Riding; 7 Ann. c. 20, for Middlesex; and 8 Geo. 2, c. 6, for the North Riding of Yorkshire. By the 5 & 6 Will. 4, c. 62, the execution of a deed or will may be proved by a declaration instead of an affidavit; see Pref. s. 5, *ante*, p. 42.

Required by
the Registry
Acts.

2. As to whether this affidavit requires a stamp, see Pref. s. 6.

A. B. [a witness to the execution of the memorial and of the deed memorialized] of _____ in the county of _____ maketh oath and saith that he was present and did see the indenture bearing date &c. referred to in the memorial hereunto annexed duly executed by C. D. (grantor) [or E. F. (grantee)] of _____ in the county of _____ one of the parties to the same indenture. And this deponent further saith that he was present and did see the memorial hereunto annexed duly signed and sealed by the said C. D. [or E. F.] And that the names of this deponent and of [other witnesses to the memorial] in the county of _____ set and subscribed to the said memorial as the witnesses to the execution thereof by the said C. D. [or E. F.] are of the respective proper handwriting of this deponent and of the said [other witnesses]

[Deponent A. B.]

Sworn at the public office Southampton

Buildings the _____ day of _____

Before me

G. H.

—◆—
No. XXIX.

Declaration of the Identity of Parcels.

No. XXIX.
Identity of
Parcels.

I A. B. do solemnly and sincerely declare as follows That I am of the age of _____ years and upwards and have resided

No. XXIX.
*Identity of
Parcels.*

in the parish of for thirty years last past and that I well know the situation extent boundaries and occupation of the lands of in the said parish and that the same were for years or thereabouts in the occupation of

2. That the field called was formerly two fields called respectively and and divided from each other by a quick hedge running from north to south about years ago And that the field or meadow ground situated &c. and called by the name of was formerly and about years ago arable land when the same was laid down into pasture and hath ever since continued so.

3. That the said piece of ground called is as I well remember and verily believe the same piece of ground as was formerly called and as aforesaid And that the said piece of ground called is the same piece of ground as was formerly meadow land &c. &c. (*as the case may be*).

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an act made and passed in the sixth year of his late Majesty King William the Fourth intituled "An Act to repeal an Act of the present session of Parliament intituled An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State and to substitute Declarations in lieu thereof and for the more entire Suppression of Voluntary and Extrajudicial Oaths and Affidavits and to make other Provisions for the Abolition of unnecessary Oaths."

The said A. B. declared to the truth of the
above declaration at in the
said county of the day of
185

A. B.

Before me

C. D.



No. XXX.

No. XXX.
*Possession of
an Estate.*

*Declaration of long Possession of an Estate as Evidence of
Ownership.*

I A. B. do sincerely and solemnly declare that I am and have been for the space of years last [or "have for the space of years past resided at &c." *as the case may be*] the bailiff or land steward of of &c. and that during the

whole of the said time (except only at short intervals) the said
 hath resided in the dwelling house situated [*or* "called"]
 in the said parish and occupied and enjoyed the lands and
 hereditaments thereunto adjoining without any interruption or
 claim by or from any other person or persons to the same or to
 the rents or profits thereof to my knowledge or belief and I have
 heard and believe that the said and his late
 father deceased have been in the possession and quiet enjoyment
 of the said premises for the space of years and upwards
 and I have heard and believe that the said took possession
 of the said lands &c. as heir-at-law of the said his said
 late father deceased [*or* "as purchaser thereof from of
 &c." *as the case may be*] and further that to the best of my know-
 ledge and belief such possession and enjoyment as aforesaid was
 adverse to and without any express assent or permission of or
 by C. D. of &c. or of any person claiming under him.

And I make &c. [*see last precedent*, p. 56].

The said A. B. declared &c. See *ante*, p. 56.

A. B.

No. XXX.

*Possession of
an Estate.*

No. XXXI.

Affidavit verifying Account of Personal Estate.

In Chancery.

[*Title of Cause.*]

We A. B. of &c.

C. D. of &c. and E. F. of &c.

the above-named defendants severally make oath and
 say as follows

1. We say that we have according to the best of our know-
 ledge remembrance information and belief set forth in the first
 schedule hereunder written a full true and particular account and
 inventory of the personal estate of or to which G. H. the testator
 in the decree [*or* "order"] dated made in this cause, named
 or referred to and who died on the day of

185 was possessed or entitled at the time of his death AND NOT
 BY HIM SPECIFICALLY BEQUEATHED.

2. And we further say that save what is set forth in the said first
 schedule AND WHAT IS BY THE SAID TESTATOR SPECIFICALLY BE-
 QUEATHED the said testator was not to the best of our knowledge
 information or belief at the time of his death possessed of or
 entitled to any debt or sum of money due to him from us or any

No. XXXI.

*Account of
Personal Estate.*

These words to
be inserted
only when the
direction is to
take an account
of personal
estate not spe-
cifically be-
queathed.

No. XXXI.
Account of
Personal Estate.

or either of us on any account whatsoever nor to any leasehold or other personal estate goods chattels or effects in possession or reversion absolutely or contingently or otherwise howsoever.

3. And we further say that the said testator's funeral expenses have been paid and that the same consist of the items of disbursement numbered and in the account hereinafter referred to [*or if not paid it should be so stated with the amount due and to whom due*].

This should
 accord with the
 Order directing
 the account.

4. And we further say that we have in the account marked **A**, now produced and shown to us according to the best of our knowledge information and belief set forth a full true and particular account of the personal estate of the said testator NOT BY HIM SPECIFICALLY BEQUEATHED which has come to our hands or to the hands of any or either of us or to the hands of any person or persons by our or any or either of our order or for our or any or either of our use with the times when the names of the persons from whom and on what account the same has been received and also a like account of the disbursements allowances and payments made by us or any or either of us in respect of or on account of the said testator's funeral expenses debts and personal estate together with the times when the names of the persons to whom and the purposes for which the same were disbursed allowed or paid.

5. And we each speaking positively for himself and to the best of his knowledge and belief as to other persons further say that save and except as appears in the said account marked **A**, we have not nor hath any or either of us nor have nor hath any other person or persons by our or any or either of our order or for our or any or either of our use possessed received or got in any part of the said testator's personal estate nor any money in respect thereof and that the said account marked **A**, does not contain any item of disbursement allowance or payment other than such as has actually been disbursed paid or allowed on the account aforesaid.

6. And we further say that to the best of our knowledge information and belief the personal estate of the said testator now outstanding or undisposed of consists of the particulars set forth in the second schedule hereunder written.

7. And we further say that save what is set forth in the said second schedule there is not to the best of our knowledge information or belief any part of the said testator's personal estate now outstanding or undisposed of.

The first schedule above referred to.

No. XXXI.
*Account of
 Personal Estate.*

1. 50*l.* cash in the house.
2. 100*l.* cash at the testator's bankers Messrs. A. and B.
3. 1000*l.* £3 per Cent. Bank Annuities standing in the testator's name.
4. 10*l.* due from John James for half-year's rent of house at to Michaelmas 1857.
5. 32*l.* 6*s.* 8*d.* balance remaining due from John Thomas on account of half-year's rent of farm at to Michaelmas 1857.
6. 300*l.* a debt due from Samuel Jones on a bond with interest from at per cent.
7. A leasehold house situate at held under a lease for a term of which will expire on at a rent of *l.* a year, underlet to James Evans for a term which will expire on at a rent of 50*l.* a year.
8. 25*l.* half a year's rent due from the said James Evans to

The second schedule above referred to.

[*The particulars to be set forth in the same manner as above.*]
 Sworn &c.



No. XXXII.

Affidavit as to Real Estate, and verifying Account of Rents and Profits.

No. XXXII.
*Account of Rents
 of Real Estate.*

In Chancery.

[*Title of Cause.*]

We A. B. of &c. C. D. of &c. and E. F. of &c.
 the above-named defendants severally make oath and say
 as follows

1. We say that we have according to the best of our knowledge remembrance information and belief set forth in the schedule hereunder written the particulars of all the real estate which G. H. the testator in the decree [*or "order"*] dated made in this cause named or referred to and who died on the day of 18 was seised of or entitled to at the date of his will and at the time of his death [*or if the testator*

No. XXXII. *acquired any estates after the date of his will as follows*—in the first part of the schedule hereunder written the particulars of all the real estate which G. H. the testator &c. (*as above*) was seised of or entitled to at the date of his will and in the first and second parts of such schedule the particulars of all the real estate which the said testator was seised of or entitled to at the time of his death.]

Account of Rents
of Real Estate.

2. And we further say that save what is set forth in the said schedule the said testator was not to the best of our knowledge information or belief at the date of his will or at the time of his death seised of or entitled to any real estate in possession remainder or reversion absolutely or contingently or otherwise howsoever.

3. And we further say that we have according to the best of our knowledge information and belief set forth in the second schedule hereunder written the particulars of all the incumbrances affecting the said testator's real estate and what part thereof such incumbrances respectively affect.

4. And we further say that we have in the account marked **B**, now produced and shown to us according to the best of our knowledge information and belief set forth a full true and particular account of all the rents and profits of the said testator's real estate which have come to our hands or to the hands of any or either of us or to the hands of any person or persons by our or any or either of our order or for our or any or either of our use and the times when the names of the persons from whom on what account in respect of what part of such estate the same have been received and the times when the same became due and also a like account of the disbursements allowances and payments made by us or any or either of us in respect of the said testator's real estate or the rents and profits thereof and the times when the names of the persons to whom and the purposes for which the same were made.

This should
accord with the
Order directing
the account.

5. And we each speaking positively for himself and to the best of his knowledge and belief as to other persons further say that save and except as appears in the said account marked **B**, we have not nor have nor hath any or either of us nor have nor hath any other person or persons by our or any or either of our order or for our or any or either of our use possessed received or got in any rents or profits of the said testator's real estate nor any money in respect thereof and that the said account marked

B. does not contain any item of disbursement payment or allowance other than such as has actually been disbursed paid *Account of Rents of Real Estate.* or allowed as above stated.

Sworn &c.

In Chancery.

[A.]

ACCOUNT OF PERSONAL ESTATE.

(TITLE OF CAUSE.)

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.
	1857.			£ s. d.
1	Jan. 5	Evans & Co.	Found in House ...	50 0 0
2	" 10		Balance at Bankers	100 0 0
3	" 15		Half Year's Dividend on 2,000l. £3 per Cent. Annuities due 5th...	30 0 0
4	Feb. 10	John James	Half Year's Rent due Michaelmas	10 0 0
5	March 18	Samuel Jones	Bond Debt of 300l. and Interest from to	315 0 0
6	June 10	James Evans	Half Year's Rent of Leasehold House due	25 0 0
7	Sept. 16	William Williams	Produce of Sale of the above Leasehold House	500 0 0

NOTE.—This Account is *not* to be annexed to the Affidavit.

Every Sheet and every alteration and erasure must be signed by the Officer before whom the Affidavit is sworn, otherwise the Account cannot be received.

The Account is to be on Foolscap Paper, book-wise, to the above pattern, with a stitching margin half an inch, at least, in width.

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	1857.			£ s. d.
1	Jan. 6	James Price	Undertaker's Bill for Funeral	42 0 0
2	Feb. 20	Messrs. A. and B.	Proctor's Bill for Probate	53 0 0
3	July 10	John George	A Debt due to him for Medical Attendance	10 10 0
4	Dec. 20	James Price	Bond Debt of 1,000l. and 25l. for interest thereon from to	1025 0 0

This Account marked **A.** was produced and shown to A. B. C. D. and E. F. and is the Account referred to in their Affidavit sworn this day of 185 . Before me

In Chancery.

[B.]

ACCOUNT OF RENTS AND PROFITS.

(TITLE OF CAUSE.)

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account and in respect of what part of the Estate received and when due.	Amount received.
	1857.			£ s. d.
1	Jan. 5	John James	Half Year's Rent for Farm in Parish of due 29th September last	50 0 0
2	Feb. 10	Thomas Jones	One Quarter's Rent of House at due 25th December last	10 0 0
3	March 25	James Francis	Six Weeks' Rent of Cottage at due to this day ..	3 0 0
4	July 5	John James	Same as No. 1, due 25th March last..	50 0 0

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	1857.			£ s. d.
1	Jan. 5	Sun Insurance Office	One Year's Insurance against Fire due	5 0 0
2	Feb. 10	Thomas Carpenter	Repairs at John James's Farm...	15 8 0
3	March 25	James Francis	Income Tax Half Year due 10th October	0 15 0

This Account marked **B.** was produced, &c. (See above.)

No. XXXIII.

Proof of Debt.

No. XXXIII.

Affidavit to prove Debt.

In Chancery.

[Title of Cause.]

I of

1. Make oath and say that of deceased the testator mentioned in the pleadings of this cause was in his life-time and his estate still is justly and truly indebted to me in the sum of

2. And I further say that I have not received any security or satisfaction for the said debt but that the whole of the said sum of together with interest thereon at pounds per centum per annum from the day of remains justly due and owing from the estate of the said testator to me this deponent.

Sworn &c.



No. XXXIV.

Result of Sale under Decree.

No. XXXIV.

Affidavit of Auctioneer of result of Sale under a Decree of the Court of Chancery.

I A. B. of &c. the auctioneer appointed by the judge to whose court this cause is attached to sell the estates comprised in the particulars hereinafter referred to make oath and say as follows:

1. I say that I did at the time and place in the lots and subject to the conditions specified in the particulars and conditions of sale now produced and shown to me and marked with the letter A. (a) put up for sale by auction the estates described in such particulars and that the result of such sale is truly set forth in the bidding paper marked with the letter B. now produced and shown to me.

(a) This exhibit is to be the print signed by the chief clerk.

2. I further say that the sums set forth in the second column of such bidding paper are the highest sums bid for the respective lots the numbers of which are set forth in the first column opposite to such respective sums and that the persons whose names are subscribed in the third column of such bidding paper as purchasers were respectively the highest bidders for and became the purchasers of the respective lots the numbers whereof are set opposite to such respective names in the said first column of the said bidding paper at the prices or sums set

opposite to their respective names in the said second column thereof. No. XXXIV.

*Result of Sale
under Decree.*

3. I further say that the several lots opposite to the numbers of which I have in the third column of the said bidding paper written the words "not sold" were not sold no person having bid a sum equal to or higher than the reserved bidding fixed by the said judge (b).

(b) This will be varied when there is no reserved bidding.

4. I further say that no person bid any sum whatever for either of the lots opposite to the numbers of which I have in the second column of the said bidding paper written the words "no bidding."

5. I further say the said sale was conducted by me in a fair open and candid manner and according to the best of my skill and judgment.

6. I further say that I have received the sums set forth in the fourth column of the schedule hereto as deposits (c) from the respective purchasers whose names are set forth in the second column of such schedule opposite to the said respective sums in respect of their respective purchase-monies set forth in the third column of the said schedule opposite such names for the respective lots the numbers of which are set forth in the first column of the said schedule opposite to such respective names leaving due in respect of the purchase-monies set forth in the said third column the respective sums are set forth in the fifth column of the said schedule.

(c) This will be omitted when no deposit is paid pursuant to the conditions of sale.

The Schedule above referred to.

No. of Lot.	Name of Purchaser.	Amount of Purchase Money.	Amount of Deposit Received.	Amount remaining due.

The particulars and conditions of sale are marked with the letter A. and are produced to the deponent at the time of swearing his affidavit.

The Bidding Paper referred to in the Affidavit of the Auctioneer.

(B.)

[*Insert Title of the Cause.*]

This bidding paper marked B. was produced and shown to A. B. and is the same as is referred to in his affidavit sworn this

No. XXXIV. day of one thousand eight hundred and fifty
Result of Sale before me
under Decree.

We whose names are hereunder subscribed respectively bid at the sale by auction in the above cause on the day of one thousand eight hundred and fifty the sums set opposite to our respective names for and became the purchasers of the respective lots specified in the particulars produced at such sale the numbers of which are set opposite to our respective names subject to the conditions also produced at such sale

No. of Lot.	Amount of Highest Bidding.	Signatures of the Purchasers of the Lots sold.	Purchasers' Address and Quality.
1			
2			
3			

This is continued in the same manner, according to the number of lots sold.



No. XXXV. No. XXXV.
Verification of *Affidavit verifying Abstract.*
Abstract.

In Chancery. Between [*parties to suit*].
I solicitor for in this cause make oath and say
as follows
1. I say that I have carefully examined and compared the abstract written on sheets of paper now produced and shown to me at the time of swearing this affidavit and marked with the letter A. with the several deeds and documents thereby purported to be abstracted and that such abstract is a true and correct abstract of the said deeds and documents so far as such deeds and documents relate to the hereditaments referred to in an order made in this cause dated the day of
Sworn &c.



No. XXXVI.

Affidavit verifying Engrossment.

No. XXXVI.

*Verification of
Engrossment.*

In Chancery.

Between [*parties to suit*].

I of &c. make oath and say as follows

1. I say that I have carefully examined and compared the parchment writing now produced and shown to me at the time of swearing this affidavit and marked with the letter A. with the draft or paper writing now produced and shown to me at the time of swearing this affidavit and marked with the letter B. being the draft of the settled at the chambers of the judge to whose court this cause is attached pursuant to the order made in this cause dated the day of one thousand eight hundred and fifty

2. And I say that the said parchment writing is a true and correct transcript and engrossment of the said draft.

Sworn



No. XXXVII.

Affidavit of Execution of Deed.

No. XXXVII.

*Execution of
Deed.*

In Chancery.

Between [*title of cause*].

I of &c. make oath and say that I was present on the day of and did see duly sign seal and as his act and deed deliver the deed or parchment writing marked with the letter A. produced and shown to me at the time of swearing this my affidavit and that the name or signature set and subscribed thereto is the proper handwriting of the said and that the name or signature set and subscribed thereto as the party attesting the execution thereof by the said is the proper handwriting of me this deponent.

Sworn



No. XXXVIII.
*Service of Sum-
 mons.*

No. XXXVIII.

Affidavit of Service of Chief Clerk's Summons.

In Chancery.

[*State title of cause or matter from summons.*]

I A. B. of &c. make oath and say as follows

1. I did on the day of 185 personally serve D. with a summons in this cause [*or "matter"*] bearing date the day of issued from the chambers of the [*insert judge*] and addressed to the said D. by delivering to and leaving with the said D. at in the of a true copy of the said summons and at the same time showing the said D. the said summons signed by the chief clerk of the said [*insert judge*] by which summons the said D. was summoned to attend at the chambers aforesaid on the day of 185 at of the clock in the noon to be [*state the subject*] for the purpose of the proceedings directed by the said [*insert judge*] to be taken before the said chief clerk.

2. There was at the foot of the copy of the said summons so served and at the foot of the said summons when so produced as aforesaid a memorandum or statement that such summons was taken out by of solicitor for



No. XXXIX.
*Personal Service
 of Bill or Claim.*

No. XXXIX.

Affidavit of the personal Service of a Bill or Claim.

I A. B. of &c. make oath and say as follows

1. On the day of 185 I personally served the above-named defendant with a printed bill of complaint filed in the above cause at the Record and Writ Clerks' Office on the day of 185 having the indorsement thereon in the form prescribed by the statute in that case made and provided by delivering to and leaving with the said defendant at in the county of a printed copy of such bill with such indorsement thereon as aforesaid which said printed copy appeared to me to have been stamped with the stamp of the Record and Writ Clerks' Office.



No. XL.

Affidavit of Service of a Bill or Claim at the Dwelling-house of the Defendant.

No. XL.

Service of Bill or Claim.

I A. B. of &c. make oath and say as follows

On the day of 185 I served the above-named defendant with a printed bill of complaint filed in the above cause at the Record and Writ Clerks' Office on the day of 185 having an indorsement thereon in the form prescribed by the statute in that case made and provided by delivering to and leaving with [the wife or "other member of the defendant's family" or "with his servant"] at his dwelling-house situate at in the county of a printed copy of such bill with such indorsement thereon as aforesaid which said printed copy appeared to me to have been stamped with the stamp of the Record and Writ Clerks' Office.

No. XLI.

Affidavit of attesting Witness in Proof of the due Execution of a Will or Codicil dated after 31st December, 1837.

No. XLI.

Execution of Will or Codicil.

In her Majesty's Court of Probate. The Principal Registry [or as the case may be "The District Registry of "].

In the goods of A. B. deceased.

I C. D. of in the county of make oath [or "solemnly affirm"] that I am one of the subscribing witnesses to the last will and testament [or "codicil" as the case may be] of the said C. D. late of in the county of deceased the said will [or "codicil"] being now hereunto annexed bearing date and that the said testator executed the said will [or "codicil"] on the day of the date thereof by signing his name at the foot or end thereof [or "in the testimonium clause thereof" or "in the attestation clause thereto" as the case may be] as the same now appears thereon in the presence of me and of the other subscribed witness thereto both of us being present at the same time and we thereupon attested and subscribed the said will [or "codicil"] in the presence of the said testator.

N.B.—If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.

(Signed) C. D.

Sworn at on the day of 18 before me
[person authorized to administer oaths under the act, 20 §. 21
Vict. c. 77, s. 27, ante, p. 44].

No. XLII.

No. XLII.

Inland Revenue.*Affidavit for the Commissioners of Inland Revenue.—For Executors.*

In her Majesty's Court of Probate. The Principal Registry [*or*
 “The District Registry of ”].

In the goods of A. B. deceased.

The day of 18

I C. D. (*a*) make oath [*or* “solemnly affirm”] that I am one of the executors [*or* “the executor”] named in the last will and testament (*b*) of the said A. B. late of deceased that the said deceased died on or about the day of in the year of our Lord one thousand eight hundred and at (*c*) [*if in the District Registry add*, and that the said deceased at the time of his death had a fixed place of abode within the said district of] and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to and for or in respect of which a probate of the said will is to be granted exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially [*if any leaseholds insert this clause:—*“ Including the leasehold estate or estates for years of the said deceased whether absolute or determinable on a life or lives”] and without deducting anything on account of the debts due and owing from the said deceased are under the value of pounds to the best of my knowledge information and belief [*if no leaseholds insert this clause:—*“ And I [*or* ‘we’] lastly make oath that the said deceased was not possessed of or entitled to any leasehold estate or estates for years whether absolute or determinable on a life or lives to the best of my [*or* ‘our’] knowledge information and belief”].

(Signed) C. D.

Sworn at on the day of before me
 [*person authorized to administer oaths under the act, 20 & 21*
Vict. c. 77, s. 27, ante, p. 44].

(*a*) Insert the names, residences, and titles, or profession of the persons making the affidavit.

(*b*) Insert codicils, if any.

(*c*) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B.—Forms for the two leasehold clauses to be printed on the back of the affidavit.

No. XLIII.

Affidavit for the Commissioners of Inland Revenue.—For Administrators with the Will annexed.

No. XLIII.

Inland Revenue.

In her Majesty's Court of Probate. The Principal Registry [or
"The District Registry of "].

In the goods of A. B. deceased.

The day of 18

I C. D. of (a) the party applying for administration with the will (b) annexed of the personal estate and effects of A. B. late of deceased make oath [or "solemnly affirm"] that the said deceased died on or about the day of one thousand eight hundred and at (c) and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to and for or in respect of which letters of administration with the said will (d) annexed are to be granted exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not beneficially [*if leaseholds insert this clause*:—"Including the leasehold estate or estates for years of the said deceased whether absolute or determinable on a life or lives"] and without deducting anything on account of the debts due and owing from the said deceased are under the value of pounds to the best of my knowledge information and belief [*if no leaseholds insert this clause*:—"And I [or 'we'] lastly make oath that the said deceased was not possessed of or entitled to any leasehold estate or estates for years whether absolute or determinable on a life or lives to the best of my [or 'our'] knowledge information and belief"].

N.B.—Forms for the two leasehold clauses to be printed at the back of the affidavit.

(Signed) C. D.

Sworn at on the day of before me
[*persons authorized to administer oaths under the act*].

(a) Insert the names, residences, and titles, or professions of the persons making the affidavit.

(b) Insert codicils, if any.

(c) Insert the place of death, or set forth the reason why the same cannot be furnished.

(d) See note (a), *supra*.

No. XLIV.
Inland Revenue.

No. XLIV.

Affidavit for the Commissioners of Inland Revenue.—For Administrators.

In her Majesty's Court of Probate. The Principal Registry [or
 "The District Registry of "].

In the goods of A. B. deceased.

The day of 18

I C. D. of (a) the party applying for letters of administration of the personal estate and effects of the said A. B. late of make oath [or "solemnly affirm"] and say as follows That the said deceased died on or about the day of one thousand eight hundred and at (b) [if in the District Registry add, and that the said deceased at the time of his death had a fixed place of abode within the said district of] and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to and for or in respect of which letters of administration are to be granted exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons and not beneficially [if leaseholds insert this clause:— "Including the leasehold estate or estates for years of the said deceased whether absolute or determinable on a life or lives"] and without deducting anything on account of the debts due and owing from the said deceased are under the value of pounds to the best of my knowledge information and belief [if no leaseholds insert this clause:—"And I [or 'we'] lastly make oath that the said deceased was not possessed of or entitled to any leasehold estate or estates for years whether absolute or determinable on a life or lives to the best of my [or 'our'] knowledge information and belief"].

(Signed) C. D.

Sworn at on the day of before me
 [person authorized to administer oaths under the act, 20 & 21
 Vict. c. 77, s. 27, ante, p. 44].

(a) Insert the names, residences, titles or profession of the persons making the affidavit.

(b) Insert place of death, or set forth the reason why the same cannot be furnished.

N.B.—Forms for the two leasehold clauses to be printed at the back of the affidavit.

No. XLV.

Oath for Executor.

In her Majesty's Court of Probate. The Principal Registry [*or* No. XLV. Executor's Oath.
"The District Registry of "].

In the goods of A. B. deceased.

I C. D. of in the county of make oath and say
[*or* "solemnly affirm"] that I believe this paper writing [*or* "these
paper writings"] hereto annexed to contain the true and original
last will and testament [*or* "last will and testament with
codicils"] of A. B. late of in the county of deceased and
that I am the sole executor [*or* "one of the executors"] therein
named [*or* "executor according to the tenor thereof," "executor
during life," "executrix during widowhood," *or as the case may
be*] and that I will faithfully administer the personal estate and
effects of the said testator by paying his just debts and the
legacies contained in his will [*or* "will and codicils"] so far
as the same shall thereto extend and the law bind me that I will
exhibit an inventory and render an account of my executorship
whenever required by law so to do that the testator died at
 in the county of on the day of 18
[*if in the District Registry add*, and that the said deceased at
the time of his death had a fixed place of abode within the said
district of] and that the whole of the personal estate and
effects of the said testator does not amount in value to the sum
of pounds to the best of my [*or* "our"] knowledge informa-
tion and belief.

Each testa-
mentary paper
to be marked
by the persons
sworn and the
person admin-
istering the
oath.

(Signed) C. D.

Sworn at this day of 18 before me E. F.

No. XLVI.

Oath for Administrators with the Will.

In her Majesty's Court of Probate. The Principal Registry [*or*
"The District Registry of "].

In the goods of A. B. deceased.

I C. D. of in the county of make oath and say
[*or* "solemnly affirm"] that I believe this paper writing [*or* "these
paper writings"] hereunto annexed to contain the true and
original last will and testament [*or* "the last will and testament

No. XLVI.
*Administrator's
Oath, with Will.*

No. XLIX.
Handwriting.

within the said district of] for many years before and down to the time of his death and that during such period I have frequently seen him write and also subscribe his name to writings whereby I have become well acquainted with his manner and character of handwriting and subscription and having now with care and attention perused and inspected the paper writing hereunto annexed purporting to be and contain the last will and testament of the said deceased beginning thus " " ending thus " " and being subscribed thus (a) "C. D." I further make oath that I verily and in my conscience believe the whole body series and contents of the said will together with the names "C. D." subscribed thereto as aforesaid to be of the true and proper handwriting and subscription of the said "C. D." deceased.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [or "made this solemn affirmation"]

Before me

E. F.

[*person authorized to administer oaths under the act, 20 § 21 Vict. c. 77, s. 27, ante, p. 44*].



No. L.

No. L.
Condition and
Finding.

Affidavit of Plight and Condition and Finding.

In her Majesty's Court of Probate. District Registry of
I A. B. of in the county of make oath [or "solemnly affirm"] that I am the sole executor named in the paper writing now hereunto annexed purporting to be and contain the last will and testament of E. F. late of in the county of deceased (who died on the day of at [or if in District Registry add, and had at the time of his death a fixed place of abode at within the said district of]) the said will bearing date the day of beginning thus " " ending thus " " and being subscribed thus "C. D." and having viewed and perused the said will and particularly observed that [*here recite the finding of the will and the various obliterations, interlineations, erasures and alterations (if any), and the general plight and condition of the will or any other matters*

(a) Include in these recitals the date of the will.

requiring to be accounted for, and clearly trace the will from the possession of the deceased in his life time up to the time of making this affidavit] I the deponent lastly make oath that the same is now in all respects in the same state plight and condition as when found [*or as the case may be*].

No. LI.
Condition and
Finding.

On the day of 18 the said A. B. was duly
sworn at to the truth of this affidavit [*or “made
this solemn affirmation before me”*]

I. J.

[*person authorized to administer oaths under the ac*].

No. LI.

Affidavit of Search (b).

No. LI.
Search for Will.

In her Majesty's Court of Probate. The Principal Registry [*or
“The District Registry of ”*].

I A. B. of in the county of make oath [*or
“solemnly affirm”*] that I am the sole executor named in the
paper writing hereunto annexed purporting to be and contain the
last will and testament of C. D. late of deceased who died
on the day of in the year 18 at [*or if in
District Registry adl*, and had at the time of his death a fixed
place of abode at within the said district of] the said
will beginning thus “ ” ending thus “In witness whereof
I have hereunto set my hand this day of in the
year of our Lord one thousand eight hundred and fifty-four” [*or
as the case may be*] and being thus subscribed “C. D.” And
referring particularly to the fact that the blank spaces originally
left in the said will for the insertion of the day and month of
the date thereof have never been supplied [*or “that the said will
is without date,” or as the case may be*] I further make oath [*or
“solemnly affirm”*] that I have made inquiry of E. F. the soli-
citor of the said deceased and that I have also made diligent and
careful search in all places where he the said deceased usually
kept his papers of moment and concern and in his depositories
in order to ascertain whether he had or had not left any other
will but that I have been unable to discover any such will And I
lastly make oath [*or “solemnly affirm”*] that I verily believe the
said deceased died without having left any will codicil or testa-

(b) This form
of affidavit to be
used when it is
shown by affi-
davit that
neither the
subscribed wit-
nesses nor any
other person
can depose to
the precise
time of the
execution of
the will.

No. LI. mentary paper whatever other than the said will by me herein-
Search for Will. before deposited of.

A. B.

On the day of 18 the said A. B. was duly
 sworn at to the truth of this affidavit [or "made this
 solemn affirmation"] before me

G. H.

[*person authorized to administer oaths under the act, 20 & 21
 Vict. c. 77, s. 27, ante, p. 44*].



No. LII.

No. LII.
 Of a Creditor.

*Affidavit of a Creditor on applying for Letters of Adminis-
 tration where the Executor is abroad.*

Obs. By the 38 Geo. 3, c. 87, s. 2, it is provided, that at the end of twelve calendar months after the death of a testator, if the executor is out of the jurisdiction of the courts, special administration may be granted upon the application of any creditor, next of kin or legatee, grounded upon an affidavit to the effect following. The provisions of the above act are extended to all cases where letters of administration have been granted, and the person to whom administration shall have been granted shall be out of the jurisdiction of the courts of law and equity, 20 & 21 Vict. c. 77, s. 74.

I A. B. of &c. do swear that there is due and owing to me on bond [or "simple contract" or "upon account unsettled," *as the case may happen to be*] (in which latter case he will swear to the best of his belief only) from the estate and effects of late of deceased to the best of his belief the sum of £ and that C. B. the only executor capable of acting and to whom probate has been granted has departed this kingdom and is now out of the jurisdiction of her Majesty's courts of law and equity and that this deponent is desirous of (*a*) exhibiting a bill in her Majesty's Court of for the purpose of being paid his demand out of the assets of the said testator.

(*Deponent.*)

(*a*) Where it is a next of kin or legatee "of administering to the estate and effects of &c. for the purpose of obtaining his share of the same" [or "of obtaining the legacy given to him by the said will"].

AGREEMENTS.

- | | |
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| <ol style="list-style-type: none"> 1. <i>Definition of an Agreement.</i> 2. <i>Parties to an Agreement.</i> 3. <i>Subjects of an Agreement.</i> 4. <i>Form of an Agreement.</i>
<i>Deeds and Parol Agreements.</i> 5. <i>Signing an Agreement.</i> 6. <i>Recitals in an Agreement.</i> | <ol style="list-style-type: none"> 7. <i>Consideration for the Agreement.</i> 8. <i>Construction of Agreements at Law and in Equity.</i> 9. <i>Penalty Clause.</i> 10. <i>Stamps on Agreements.</i> 11. <i>Different kinds of Agreements.</i> |
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SECT. 1. An agreement, in its most extensive sense, is defined to be the consent of two or more persons in constituting or dissolving some legal obligation, and in that sense includes every species of assurance; but, in a more limited acceptation of the term, it implies any memorandum, articles or minutes, entered into between two or more persons, either to serve as a deed of itself, or as preparatory to some more formal instrument, 1 Bac. Ab. 67. A contract or agreement *not under seal* may be defined to be an engagement entered into between two or more persons, whereby, in consideration of something done or to be done by the party or parties on one side, the party or parties on the other promise to do or to omit to do some act, Com. Dig. Agreement (A. 1); Bac. Ab. Agreements, Co. Litt. 47 b; Chitty on Contr. 8, 5th edit.

Definition of an agreement.

2. No one can enter into an agreement who has not discretion, or the power of using it; therefore idiots, lunatics, infants, married women, and persons under any duress or restraint, are in general incapable of contracting, Perk. 12, 16; 4 Co. 124; 5 ib. 119; Sheph. Touch. 39; *Harris v. Lee*, 1 P. Wms. 483; 1 Atk. 409; 1 Fonb. Eq. 68. But the law allows infants to make contracts, with power to vacate them if they prove prejudicial; and a contract by an infant for necessities is absolutely binding, Co. Litt. 172 a; 2 Sid. 109; 1 Lev. 86; *Truman v. Hurst*, 1 T. R. 41; see Chitty on Contr. pp. 136—148, 5th edit. And by the 9 Geo. 4, c. 14, s. 5, agreements or promises made in infancy must be confirmed by writing when the party comes of full age. By the 1 Geo. 1, c. 10, for the maintenance of poor clergy, agreements entered into by guardians for infants and idiots were to be valid; but by 11 Geo. 4 & 1 Will. 4, c. 65, s. 26, such agreements may now be made by guardians in case of infants, with the approbation of the Court of Chancery, and in the case of lunatics by their committees, with the consent of the Lord Chancellor. And by 6 & 7 Will. 4, c. 115, s. 1, guardians, committees and husbands are empowered to enter into agreements for making inclosures for infants, lunatics and *femes covert*. In many cases a married woman is competent to contract as if she were sole in respect of her

Parties to an agreement.

Agreements.

separate estate, *Norton v. Turvill*, 2 P. Wms. 144; *Grigby v. Cox*, 1 Ves. 517; 1 Fonb. Eq. 91. The executors and administrators of a party are usually named in an agreement; but this is not necessary in order to bind his assets, as his representatives are, by intendments of law, included in his person, *Hyde v. Skinner*, 2 P. Wms. 270; *Wills v. Murray*, 4 Exch. 865. But the word "heirs" must not be omitted when the real estate of the party is intended to be bound; Plowd. 439; 2 Saund. 136. See Wms. Executors, P. IV. B. II. ch. 1, s. 1.

Subjects of an agreement.

3. Generally speaking, every kind of right or interest, whether of a real, personal, or mixed nature, may be the subject of an agreement; but it is requisite that it be within the power of the party contracting. And it must be such as is not forbidden by the rules of religion and morality, or by the laws of the land. An agreement may either be executed at the beginning, as where money is paid for the thing agreed for, or it may be executory, where it is to be done at some future time.

Form of an agreement.

4. Every agreement, to be effectual, ought to be full and complete, and so framed as to express with clearness and precision the stipulations and terms of the contract. No contract for the sale of any goods, wares, or merchandize for the price of 10*l.* sterling or upwards is good, except the buyer shall accept part of the goods so sold, and actually receive the same or give some earnest to bind the bargain or in part of payment, or unless some note or memorandum in writing of the bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized, 29 Car. 2, c. 3, s. 17. The last provision is now extended to all contracts for the sale of goods of the value of 10*l.* sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery, 9 Geo. 4, c. 14, s. 7. Agreements need not be under both the hand and seal of the parties. A letter takes an agreement out of the statute, not only in consideration of marriage, but also in respect to lands, *Ford v. Compton*, 2 B. C. C. 32. Where agreements are under the hand and seal of the parties, they are, as to the subject-matter, sometimes called *special contracts* or *specialties*, and, as to the instrument, *deeds*; but where they are verbal, or only in writing under the signature of the parties, they are termed *parol agreements*, or *absolutely agreements*. The former kind of agreements are binding on the heir of the parties if named, but the latter on the personal representatives only, 2 Wms. Saund. 7, n.; 4 ib. 136, *Wilson v. Knubley*, 7 E. 128. By the 3 & 4 Will. 4, c. 42, s. 3, actions of debt or covenant on bonds, or other specialties, must be brought within twenty years after cause of

Deeds.

Parol agreements.

action arises; actions upon parol agreements must be brought within six years after the cause of action arises, *Jones v. Pope*, 1 Wms. Saund. 37. An agreement by parol cannot dispense with, alter, or control a deed, *Sellers v. Beckford*, 8 Taunt. 31, *S. C.*; 1 B. Moore, 400. Agreements.

5. Signing is, by the Statute of Frauds, one requisite to the validity of an agreement; but as a signature by one of the parties will be binding only on the party signing, it is important for both parties to sign, in order to give full efficacy to the contract, 2 Ch. Ca. 164; *Champion v. Plummer*, 1 N. Rep. 254; *Cooper v. Smith*, 15 East, 103; *Phillimore v. Barry*, 1 Campb. 513; *Symmons v. Want*, 2 Stark. 371. The signature of an authorized agent of an agreement in writing, even though not authorized in writing, but verbally only, will bind his principal, *Mortlock v. Buller*, 10 Ves. 311; *Wilson v. Hart*, 7 Taunt. 295; *Clinan v. Cooke*, Sch. & Lef. 31, 32. A cross made by one who is not able to write, may be a sufficient signing if it be sufficiently identified, *Baker v. Dering*, 8 Ad. & E. 94; and if a man be in the habit of printing or stamping his name, he will be considered to have signed by his printed name, 1 Sugd. Pow. 6th edit. 30; *Saunderson v. Jackson*, 2 B. & P. 238; *Schneider v. Norris*, 2 M. & S. 286. Where an agreement is signed by an attorney or authorized agent, he must sign in the name of his principal, not in his own name, 2 Ld. Raym. 1418; *White v. Cuyler*, 6 T. R. 176; *Wilks v. Back*, 2 East, 142; *Coles v. Trecothick*, 9 Ves. 234. The signature required by the statute need not be in any particular part of the instrument, 1 Sugd. V. & P. 10th edit. 180 *et seq.* But it has been held, that inserting the name in the middle of a writing cannot have the effect of a legal signature, *Hawkins v. Holmes*, 1 P. Wms. 770; *Stokes v. Moore*, 1 Cox, 219. As to the attestation or signing in the presence of witnesses, this is necessary for preserving the evidence of the deed, 1 Lev. 25; 1 Sid. 37. And in regard to deeds made in pursuance of powers, where the power requires attestation, a deed will be void at law, where there is no mention of such attestation, 1 Sugd. Pow. 6th edit. 302. See post, tit. *Attestations*. Signing an agreement.

6. Recitals are not an essential part of a deed or agreement, but they are nevertheless proper in some cases, as they serve to explain the meaning of the witnessing part, and show the full intention of the parties, and the state of the property proposed to be dealt with. Any important variance between the recitals and the witnessing part of an instrument would be a reason for suspicion that the instrument was open to question on the ground of fraud or mistake. In the case of a release (not a conveyance) the recitals are of still greater importance, as the witnessing part will not be held to extend to matters which the recitals do not show an intention to comprise. See Chitty on Contracts, pp. 83–87, 5th edit. Attestation of an agreement.

7. Some consideration or other is absolutely necessary to support Recitals in an agreement. Consideration

Agreements.
for an agree-
ment.

an agreement, otherwise it is held to be a *nudum pactum*, and void at law, *Plowd.* 308; *Dy.* 336; *Jones v. Ashburnham*, 4 East, 455; *Parker v. Bayliss*, 2 B. & P. 73. So if the consideration be the doing that which the law prohibits, or which is offensive to decency or good morals, it will be void, *Martyn v. Blithman*, *Yelv.* 197. But any reasonable consideration, however small, will be deemed sufficient, *Dy.* 272; 1 *Roll. Abr.* 22, 23; *Williamson v. Clements*, 1 *Tannt.* 523. And if the agreement be under seal, no consideration need appear on the face of the deed; but parol agreements are not allowed to be conclusive evidence of a sufficient consideration, *Pellans v. Mierop*, 3 *Burr.* 1670; *Rann v. Hughes*, cited 7 *T. R.* 350, n.; 1 *Fonbl. Eq.* 342, 347. See *Broom's Legal Maxims*, pp. 669–690, 2nd ed.

Construction
of agreements
in equity and
at law.

8. The construction of deeds and agreements is the same in equity as at law, but the performance required in a court of equity and that of law is different. At law, a covenant must be strictly and literally performed; in equity, it must be really and substantially performed, *Eaton v. Lyon*, 3 *Ves.* 692. Equity will relieve against a strict performance upon equitable circumstances, where there is no wilful neglect and misconduct, and will also enforce the performance of fair and reasonable contracts, even although they be by parol, where the party wants the thing in specie, 2 *Freem.* 268; 2 *Vern.* 455; *Gunter v. Halsey*, *Amb.* 586; *Errington v. Amesley*, 2 *B. C. C.* 443. But if the contract can be and is intended to be compensated by damages, courts of equity will not interpose, 1 *P. Wms.* 570; *Capper v. Harris*, *Bunb.* 135. See now stat. 21 & 22 *Vict. c.* 27, giving power to the Court of Chancery to award damages in certain cases.

Penalty clause.

9. In contracts of an executory kind, a clause is usually inserted, stipulating for the payment of a sum of money, either by way of penalty or for liquidated or ascertained damages, in case of violating any of the articles of the contract by either party. The latter mode, by which the parties themselves fix the amount of damages, is to be preferred, as it prevents the necessity of a reference to a jury for that purpose, *Astley v. Welden*, 2 *Bos. & Pull.* 346. But the intention of the parties must be clearly expressed, for the mention of the word “penalty,” or “penal sum,” precludes the court from considering it as liquidated damages, *Smith v. Dickenson*, 2 *B. & P.* 630; *Astley v. Welden*, *ub. sup.* See *Chitty on Contracts*, pp. 763–768, 5th ed. It is, however, worthy of observation, that, notwithstanding the above clause, equity will compel a specific performance of a contract where redress in the shape of damages, or otherwise, is an inadequate remedy, *Hobson v. Trevor*, 2 *P. Wms.* 191; *Goring v. Nash*, 3 *Atk.* 186.

Stamps on
agreements.

10. Agreement, or any minute or memorandum of agreement made in England or Ireland, *under hand only*, or made in Scotland without any clause of registration (not charged otherwise than under the head

agreement in the schedule to the Act 55 Geo. 3, c. 184, nor expressly exempted from all stamp duty), where the matter thereof shall be of the value of 20*l.* or upwards, whether the same shall be only evidence of a contract, or obligatory upon the parties from its being a written instrument, together with every schedule, receipt, or other matter put or endorsed thereon or annexed thereto, the stamp of 2*s.* 6*d.*

Agreements.

And where the same shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein over and above the first 1080 words, a further progressive duty of 2*s.* 6*d.* 13 & 14 Vict. c. 97, Sched.

The stat. 55 Geo. 3, c. 184, Sched. part 1, tit. Agreement, contains the following exemptions from all stamp duties:—

Exemptions
from stamps.

Memorandum or agreement for granting a lease or tack at rack-rent of any messuage, land or tenement under the yearly rent of five pounds.

Memorandum or agreement for the hire of any labourer, artificer, manufacturer or menial servant.

Memorandum, letter or agreement made for or relating to the sale of any goods, wares or merchandize.

Memorandum or agreement made between the master and mariners of any ship or vessel for wages, on any voyage coastwise from port to port in Great Britain.

Letters containing any agreement (not before exempted) in respect of any merchandize or evidence of such an agreement which shall pass by the post between merchants or other persons carrying on trade or commerce in Great Britain, and residing and actually being at the time of sending such letters at the distance of fifty miles from each other.

A memorandum or other writing made necessary by the 9 Geo. 4, c. 14, is exempt from stamps, 9 Geo. 4, c. 14, s. 8.

Contracts to serve as artificers, servants, &c. in the colonies are exempted from stamp duty, 17 & 18 Vict. c. 83, s. 21.

An agreement may be stamped within fourteen days after it has been made or entered into. If not carried to be stamped within that time, a penalty of 10*l.* will be payable, besides the duty, 7 & 8 Vict. c. 21, s. 5.

Stamping
afterwards.

Provision is now made for stamping documents unstamped, or insufficiently stamped, produced as evidence at the trial of any cause, 17 & 18 Vict. c. 125, ss. 28, 29.

11. The above remarks will suffice to show the distinction between agreements when they are under seal, and the informal instruments which are properly so called. As to agreements for particular purposes, see further AGREEMENTS *for a lease*, PARTITION, PURCHASE,

Different kinds
of agreements.

Agreements. &c. And as to regular deeds, see further BONDS, CONDITIONS, COVENANTS, DEEDS, LEASES, PURCHASE DEEDS, &c.

Agreement with an agent, broker or factor, see *post*, AGREEMENTS, (*Principal and Agent*).

—◆—
No. LIII.

Agreement for Building a House.

No. LIII.

Building a House.

Obs. 1. Where a contract is made to build a house according to a certain plan, and the owner makes deviations from the plan, this does not vacate the contract, but subjects the owner to the payment of any additional charges occasioned by such deviations, *Pepper v. Barland*, Peake's N. P. C. 103; *Godfrey v. Thomas*, Holt's N. P. C. 236.

2. The completion of a contract for building a house may be enforced by the heir on the death of his ancestor, and the executors must pay the builder whatever remains due out of the personal estate, unless it be otherwise stipulated, 2 Vern. 322; 3 P. Wms. 223; Cas. Eq. temp. Talbot, 83, n. If a party contracts for himself and his executors to build a house and dies, the executors must go on, or they will be liable in damages for not completing the work, *Marshall v. Broadhurst*, 1 Cr. & Jerv. 405; 1 Tyrw. 330.

Articles of Agreement made entered into and concluded this
day of in the year of our Lord 18 Between

Parties.

(*Builder*) of &c. of the one part and (*Owner*) of the other part
as follow The said (*B.*) for the considerations hereinafter mentioned doth hereby for himself his heirs (*a*) executors and administrators covenant and agree with the said (*O.*) his executors administrators and assigns that he the said (*B.*) his executors or administrators shall and will at his or their own proper costs and charges within the space of calendar months next after the date hereof in a good substantial and workmanlike manner erect build and set up one house or messuage upon the ground belonging to the said (*O.*) at together with the several erections and buildings set forth in the schedule hereunder written according to the draft or scheme hereunto annexed subject to the approbation of the surveyor of the said (*O.*) (*b*)
And will build the same with such stone brick timber and other

Builder agrees
to build.

(*a*) As to the naming of heirs, executors and administrators, see AGREEMENTS, Pref. s. 2.

(*b*) If it be so agreed, say instead of the above, "*And also* shall and will at his or their own proper costs find and provide good proper and sufficient materials of all kinds for erecting the said building subject to the approbation of the said (*O.*) or his surveyor."

materials as the said (O.) shall find and provide for the same
And it is further agreed by and between the said parties That
 if the said (B.) his executors or administrators shall be guilty of
 any neglect or delay in the building finishing or completing the
 said house and the said (O.) shall give or leave notice in writing
 of such neglect or delay at the place of abode of him the said
 (B.) his executors or administrators or upon the said piece of
 ground intended to be built upon that then and in such case it
 shall and may be lawful for the said (O.) his executors or ad-
 ministrators within the space of _____ days after such notice
 given or left as aforesaid in case the said (B.) his executors or
 administrators shall not proceed on the completion of the said
 works to employ a sufficient number of workmen to finish and
 complete the said house and shall and may deduct and retain to
 himself or themselves all such sums of money and expenses as he
 or they shall pay or incur in the completion of the said house
 And that the said (B.) his executors or administrators shall not
 in any manner do or cause to be done any act matter or thing
 whatever to prevent the persons so employed by the said (O.)
 his &c. from finishing and completing the said house And the
 said (O.) doth hereby for himself his heirs executors adminis-
 trators and assigns covenant and agree with the said (B.) his
 executors administrators and assigns that he the said (O.) his
 heirs executors or administrators shall and will well and truly
 pay or cause to be paid unto the said (B.) his executors &c. the
 sum of £ _____ of lawful money of Great Britain in manner fol-
 lowing that is to say the sum of £ _____ part thereof at the lay-
 ing of the chamber floors the sum of £ _____ other part thereof
 at the covering in and the sum of £ _____ in full for the work
 when completely finished And that he the said (O.) his &c. shall
 and will at his or their own proper costs and charges find and
 provide all the stone brick and timber and other materials neces-
 sary for the building of the said house *Provided always* and it
 is hereby agreed and declared by and between the parties hereto
 That in case the said (O.) his executors &c. shall direct any more
 to be done in or about the said buildings and premises than what
 is contained in the said schedule hereunder written that then
 and in such case the said (O.) his executors administrators or
 assigns shall pay or cause to be paid to the said (B.) his exe-
 cutors or administrators so much money as such extra work
 shall be worth at a reasonable valuation And lastly it is hereby

No. LIII.

*Building a
House.*

Provision in
case of delay.

Owner agrees
to pay,

to find ma-
terials,

and allow for
alterations.

Arbitration
clause.

No. LIII.
*Building a
 House.*

Penal clause.

agreed by and between the said parties to these presents That if any dispute or difference shall happen to arise between them touching the said house and buildings or the money to be paid for the same according to the admeasurement and value thereof in case the same shall be admeasured or valued or touching or concerning any alteration or addition or any other matter or thing whatsoever relating to the work hereby contracted to be done That then and in such case it shall be left to the determination and award of three indifferent persons one to be named by the said (*B.*) his &c. and the other by the said (*O.*) his &c. and the third by the said two persons so to be named immediately after such dispute shall arise And the said parties hereto do hereby covenant and agree with and to each other that they the said parties shall and will severally stand to abide perform and keep the award and determination of the said three persons so as the same be made in writing under the hands and seals of the said arbitrators within one calendar month next after such reference And (*a*) for the due observance of the stipulations by them mutually entered into each of them the said (*B.*) and (*O.*) by these presents doth bind himself unto the other of them in the penal sum of £ by way of liquidated damages In witness whereof the said (*B.*) and (*O.*) have set their hands the day and year first above written.

(*Builder*)
 (*Owner*)



No. LIV.

No. LIV.

Building a Ship.

Agreement for Building a Ship.

Covenant to
 build,

Articles &c. between (*Shipbuilder*) of &c. of the one part and (*Merchant*) of &c. of the other part Witness that the said (*Builder*) shall and will at his own proper costs and charges in all things build or cause to be built within the space of calendar months from the date hereof one good ship of not less than tons and not exceeding tons burthen with such materials and to be furnished and provided in such manner as in the schedule No. I. hereunto annexed is more particularly set forth And when the said ship is completed he the said (*B.*) will let the same to him the said (*Merchant*) for the said several

and let to hire
 when finished.

(*a*) As to this penal clause, see AGREEMENTS, Pref. s. 9.

voyages at such freight and demurrage and upon such terms as in schedule No. II. hereunto annexed are particularly mentioned *And* for that purpose the said ship shall at the proper costs and charges of the said (*B.*) be from time to time repaired refitted and provided in all things according to the terms hereinbefore mentioned and according to the usage and customs of merchants *And* the said (*B.*) or other managing owner and the commander thereof shall and will from voyage to voyage enter into a charter-party to the said (*M.*) upon the terms in the same schedule mentioned and in such charter-parties such further stipulations and provisions as are necessary and reasonable shall from time to time be inserted *And* the said ship until she has performed such several voyages shall not be employed upon any other service or upon any other occasion whatever except in the service of the said (*M.*) without the consent in writing of him the said (*M.*) *And* that during such time as the said ship is in the service of the said (*M.*) the said (*B.*) his executors administrators and assigns and all and every other the commanders owners and officers and crew of the said ship shall conform themselves in the equipment of the said ship or otherwise to all such lawful and reasonable orders and instructions as shall be given from time to time by the said (*M.*) his executors administrators or assigns *Provided always* that in case of breach of these agreements aforesaid or any of them by or on the part of the said (*B.*) it shall be lawful for the said (*M.*) his executors &c. the said ship wholly to reject from his service and also to recover satisfaction for the damages occasioned by any such breach of agreement or to seek any other such remedies as he or they shall think fit *In witness whereof* &c.

No. LIV.
Building a Ship.

Ship not to be
otherwise em-
ployed.

Owner will
conform to
directions.

Schedules referred to—

No. I. Dimensions of the ship and inventory of stores.

II. The charter-party.



No. LV.

Agreement between a Manufacturer or other Person with a Carrier, to explain and restrict the Provisions of the 11 Geo. 4 & 1 Will. 4, c. 68.

No. LV.
Carrier.

Obs. By the Carriers' Act, 11 Geo. 4 & 1 Will. 4, c. 68, the common law liability of carriers is much qualified; but as by s. 6 of that

No. LV.
Carrier.

act it is provided that it should not affect any special contracts, it is frequently necessary to enter into express agreements suited to the particular circumstances of the case. By the 8 & 9 Vict. c. 42, canal companies are authorized to carry as common carriers upon their respective canals, rivers or navigations, and to sue and be sued as carriers; and the provisions in force relating to common carriers are made to apply to such companies. By "The Railway Clauses Consolidation Act, 1845," 8 & 9 Vict. c. 20, s. 89, it is enacted, that nothing in that act or in the special act should extend to charge or make liable the company further or in any other case than where stage-coach proprietors and common carriers would be liable, nor should extend in any degree to deprive the company of any protection or privilege which common carriers or stage-coach proprietors might be entitled to, but on the contrary, the company should at all times be entitled to the benefit of every such protection and privilege. See Shelford on Railways, pp. 482—493, 3rd ed.

Agreement to
 carry any kind
 of goods,

except above a
 certain value.

Memorandum of an Agreement entered into the day of
 in the year of our Lord between (*Carrier*) of &c.
 of the one part and (*Manufacturer* &c.) of the other part *Wit-*
nesseth That he the said (*C.*) for himself his executors, &c. doth
 hereby agree with the said (*M.*) that he the said (*C.*) shall and
 will at all times take charge of and convey all goods of whatever
 description which shall be offered and committed to the charge
 of him the said (*C.*) by the said (*M.*) and will truly and safely
 deliver the same to any persons to whom they may be addressed
 whether the goods be specified or enumerated or otherwise and
 whatever may be the value of such goods provided the same do
 not exceed the sum of £ and if exceeding that value then
 after the rate of £ *per centum* for the alleged excess in
 value *And* the said (*M.*) doth hereby agree with the said (*C.*) that
 he the said (*M.*) his executors &c. shall and will from time to
 time as and when any goods are committed by him the said (*M.*)
 to the charge of the said (*C.*) pay or cause to be paid to the said
 (*C.*) his executors &c. such per-centage as aforesaid together
 with the usual charge for the same in respect of weight and
 distance.

In witness, &c.

No. LVI.

No. LVI.
Coachmaker.

Agreement for the Hire of a Coach or Chariot.

Coachmaker
 agrees to pro-
 vide coach,

Memorandum &c. That the said (*Coachmaker*) doth agree
 with the said (*Employer*) that he the said (*C.*) his executors and

administrators shall and will at his or their own proper charge on or before the day of next provide (a) a new handsome well-built chariot with a good hammercloth and harness for one pair of horses with all other accoutrements to the reasonable good liking of the said (E.) for the period of determinable nevertheless as hereinafter mentioned after the rate of for each month And that he the said (C.) his executors &c. shall and will at their own proper charge keep the said chariot and harness &c. in good and proper order save and except any sashes or glass which may be accidentally or otherwise broken while the said chariot is in the use of the said (E.) (b) And in consideration of the premises the said (E.) doth hereby agree that he the said (E.) his executors administrators or assigns shall and will on the day of in each month during the subsistence of this agreement well and truly pay or cause to be paid unto the said (C.) his executors administrators or assigns the sum of £ as aforesaid *Provided always* that in case the said (E.) depart this life during the subsistence of these presents the same shall be considered as at an end and determined on the expiration of next thereafter and that the said (E.) or his executors &c. shall not be obliged to pay more than the proportion of the month which may then have elapsed And it is hereby further agreed by and between the said parties that on either of them the said (E.) or (C.) giving to the other days' (or months') notice of his intention to put an end to this agreement the same shall after the expiration of the said notice absolutely cease and be void.

No. LVI.
Coachmaker.

and to keep the
same in repair.

Employer
agrees to pay
stipulated hire.

Dissolution of
agreement.

In witness &c.



Agreement to accept a Composition—see post, COMPOSITION.

(a) If the agreement be with a livery-stable-keeper for the hire of a pair of horses, say—

“Two good strong gentle and active horses well matched and a good skilful and civil driver to the reasonable good liking of the said (E.) and in case the said driver or horses be disabled then he the said (L.) shall provide other like horses or driver as aforesaid.”

(b) If it be so agreed, say—

“Or except such damages as may happen to the said chariot by overturning or other violence, whether under the care of the coachman or servant of the said (E).”

No. LVII.

No. LVII.

Copartnership.*Agreement to enter into Copartnership at some future Time.*

Obs. 1. It seems that a court of equity will decree the specific performance of a contract for a copartnership, provided it is to continue for a definite period, *Buxton v. Lister*, 3 Atk. 383; *Anon.* 2 Ves. 629; but not otherwise, *Walker v. Harris*, 1 Anstr. 245. See Collyer on Part., ch. 2, s. 2.

2. In an agreement of this kind should be inserted all conditions and covenants which are not usual; as, for instance, in regard to survivorship, since the good-will of a profession, if not of a trade, will survive on the death of either party, *Farr v. Pearce*, 3 Madd. 74. This ought therefore to be provided for by express stipulation. (As to copartnership, see further, COPARTNERSHIP.)

Parties.

Terms of agreement.

Deeds of copartnership to be executed.

Covenants and clauses to be inserted in the deed.

Articles &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part *Witness* That the said A. B. doth hereby agree to take the said C. D. into copartnership with him in his trade or business of _____ for the space of seven years and to assign to him a moiety of his interest in the house wherein the said trade is now carried on the said copartnership to commence from the _____ day of _____ next ensuing on the terms and conditions following that is to say *That* the said C. D. shall pay to the said A. B. on or before the said _____ day of _____ the sum of £ _____ as a premium or fee to be admitted into the said copartnership *That* the stock in the said trade shall be valued on or before the _____ day of _____ by two indifferent persons one to be chosen by the said A. B. and the other by the said C. D. and in case they cannot agree by an umpire to be chosen by the said arbitrators *That* the said C. D. shall advance a sum equal to half the amount of the said valuation to be paid within the space of _____ calendar months after the commencement of the said copartnership *That* a proper deed or instrument in writing shall be prepared within the space of six weeks from the date of these presents at the joint expense of the said parties in which deed it shall be provided and declared *That* the capital stock shall consist of £ _____ and that if either party be minded to bring in a further capital the said joint stock shall be liable to make good the same with interest after the rate of five pounds *per centum per annum* *That* neither of the parties shall at any time during the continuance of the said term be concerned in any other trade *That* all the insurable part of the stock shall be insured at the expense of the joint trade *That* no apprentices

shall be taken nor servants dismissed or hired without the mutual consent of the said parties *That* the premiums with apprentices shall be added to the joint stock *That* books of accounts shall be kept in the usual manner and be open to the inspection of the said parties *That* true and just accounts of the joint trade shall be made half yearly and the surplus proceeds be divided equally and proportionally between them *That* neither of the parties shall apply the partnership monies to his own use nor buy and sell accept and give bills compound and release debts nor do any other thing to affect the joint trade without the consent of the other *That* if either of the said parties shall happen to die before the expiration of the said term no benefit of survivorship shall accrue to or be taken by the other of them *That* disputes shall be referred to arbitration and all other covenants provisoes and stipulations clauses and agreements shall be inserted as are usual in deeds of copartnership of a like kind. *In witness &c.*

No. LVII.
Copartnership.

—◆—
Agreement for Dissolution of Copartnership,—see post,
COPARTNERSHIP (*Dissolution*).

—◆—
No. LVIII.

Agreement by a Person to pay a Debt contracted during Infancy.

No. LVIII.
*Debtor and
Creditor
(Infant).*

Obs. No action can be maintained for charging any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification of any promise or simple contract made during infancy, unless such promise or ratification be made by some writing, signed by the party to be charged therewith, 9 Geo. 4, c. 14, s. 5. Any writing made necessary by that act is exempt from stamp duty, *Ibid.* s. 8.

I A. B. of &c. being now of full age do hereby promise and agree with and to (C.) of &c. that in consideration of the debt contracted with him during my infancy being a just and *bonâ fide* debt I will pay him the sum of £ the amount thereof after the expiration of months from the day of
Witness my hand

A. B.

—◆—

No. LIX.

Exchange.

No. LIX.

Agreement for an Exchange.

Obs. As to the nature of an exchange, see EXCHANGE. As to the stamps, see AGREEMENT, Pref. s. 10.

Recital of title. *Articles of &c.* Between A. B. of S. of the one part and C. D. of &c. of the other part *Whereas* the said A. B. is seised to him and his heirs (*a*) of certain lands situated at in the county of and the said C. D. is also in like manner seised to him and his heirs of certain messuages or tenement and land situate &c. And whereas the said A. B. and C. D. have agreed to make an exchange of their respective premises and hereditaments (*b*) *Now these presents witness* That each of them the said A. B. and C. D. so far as relates to his own acts and deeds doth hereby for himself and his respective heirs executors and administrators agree with the other of them in manner following that is to say that each of them the said A. B. and C. D. shall and will on or before the day of next at his own expense make or deliver or cause to be made and delivered unto the other of them a full complete and perfect abstract of his title to the said premises to be exchanged (*c*) *And* if the counsel of the respective parties shall be of opinion that each of them the said A. B. and C. D. has a good title to his respective premises that each of them the said A. B. and C. D. shall and will on or before the day of now next ensuing execute at the expense of the other of them such conveyances and assurances together with all necessary covenants as shall by their respective counsel be reasonably advised the said C. D. likewise receiving the sum of £ for equality of

Agreement to make exchange ;
to furnish abstract ;

to execute conveyances mutual ;

(*a*) If the premises are copyhold, recite "*Whereas* the said A. B. is seised to him and his heirs according to the custom of the manor of of certain copyhold or customary lands situate &c. And the said C. D. is also seised of &c." If leasehold, recite "*Whereas* the said A. B. is possessed of a certain messuage or tenement and premises situate &c. and held by a certain indenture of lease bearing date on or about the day of 18 and made between [*lessor*] of the one part and said A. B. of the other part subject to the rents and covenants therein contained on the part of the lessee or tenant to be paid done and performed And the said C. D. is also &c."

(*b*) If the premises are leasehold, omit the words "hereditaments."

(*c*) If the premises are leasehold, say "but in this abstract the said A. B. or C. D. shall not be required to show his lessor's title. See AGREEMENTS for a Lease, s. 6.

exchange (a) <i>And lastly</i> that each of the said parties shall be entitled to the rents and profits of the said premises so to be to them respectively assured from the day of now next ensuing up to which time all taxes rates and other charges whatsoever payable in respect to the said premises shall be paid by the party conveying the same <i>In witness</i> &c.	<p>No. LIX. <u>Exchange.</u></p> <hr/> <p>to receive rents, &c.</p>
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—◆—

Agreement for Freight--see post, SHIPPING.

—◆—

No. LX.

Agreement to relinquish a Business in Favour of Another.

<p><i>Obs.</i> 1. The good-will of a business has been frequently recognized in courts of equity as a valuable interest, <i>Kennedy v. Lee</i>, 3 Mer. 441; <i>Cook v. Collingridge</i>, Jac. 607; and so under certain circumstances in courts of law, <i>Ex parte Farlow</i>, 2 B. & Ad. 341; <i>S. P., R. v. Hungerford M. Company</i>, 4 B. & Ad. 592; but not where the profits arise from confidence in the personal skill of the party, as in the case of surgeons or attornies, <i>Farr v. Pearce</i>, 3 Madd. 78; <i>Spicer v. James</i>, cited Collyer on Part. 82. See article 7 Jur. Part II. pp. 358, 366. There cannot be a decree for the specific performance of a contract to purchase a good-will alone, unconnected with business premises, by reason of the uncertainty of the subject matter. But when a good-will is entirely or mainly annexed to the premises, and the contract is for the sale of the premises and good-will, there is not the slightest ground for doubt that such a contract is a fit matter for a decree in a suit for specific performance, <i>Darbey v. Whitaker</i>, 4 Drew. 139, 140, Per Kindersley, V. C.</p>	<p>No. LX. <u>Good-will (Business).</u></p> <hr/> <p>A good-will is property.</p>
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(a) Where sum to be paid for equality of exchange is not previously settled the following may be inserted "And it is hereby agreed that it shall be referred to E. F. of &c. and G. H. of &c. and in case of their differing in opinion to an umpire to be chosen by them to decide and determine whether any and what sum of money by way of equality of exchange shall be paid by either or which of the said parties hereto to the other of them And each of the said parties hereto agrees to pay such sum of money by way of equality of exchange to the other of them as the said referees or umpire shall order and direct and it is hereby agreed that the costs and charges of the said referees or umpire shall be equally paid by the parties hereto" See post, tit. EXCHANGE, Pref.

Provision as to
equality of ex-
change.

No. LX. 2. In *Lyburn v. Warrington* an agreement to give up a trade was
Good-will held not to require an *ad valorem* stamp, not being considered as dis-
(Business) tinct substantive property ; but an agreement for the sale of goods, as
Stamp. well as good-will for a given sum, requires a stamp, *South v. Finch*,
3 Bing. N. C. 506 ; *S. C.* 4 Scott, 293 ; see further, *post*, ASSIGN-
MENT of *Good-Will*.

Memorandum of an agreement made this day of &c.
Between I. S. of &c. widow and relict of W. S. late of &c. de-
ceased of the first part I. N. W. of &c. of the second part and
(*Surety*) of &c. of the third part as follow The said I. S. in con-
sideration of the agreement hereinafter contained on the part of
the said I. N. W. doth hereby for herself her executors and ad-
ministrators agree with the said I. N. W. his executors and ad-
ministrators *That* she the said I. S. shall and will on the day
of next relinquish the business of lately used and
carried on by the said W. S. her late husband deceased and now
continued to be carried on by the said I. S. at aforesaid to
in and in favour of the said I. N. W. *And* also in due form of
law effectually transfer and assign to him the said I. N. W. all
the stock fixtures utensils and implements in trade used in and
belonging to the said business at such prices and under such
valuation and settlement as hereinafter mentioned *And also*
shall and will grant a lease to him the said I. N. W. of the dwell-
inghouse shops warehouse and premises wherein the said I. S.
now resides and wherein the said business is now carried on
for the term of years from the day of in-
stant at or under the yearly rent of payable quarterly
clear of all taxes and deductions whatsoever *And* the said
I. N. W. doth hereby for himself his executors and adminis-
trators agree with the said I. S. her executors and adminis-
trators to accept and take the said stock fixtures utensils and
implements in trade and pay and secure to be paid in manner as
hereinafter expressed such a sum of money for such stock fix-
tures utensils and implements in trade and also the good-will
of the said business as the same shall be valued at and agreed
on by two arbitrators to be chosen one by the said I. S. and
the other by the said I. N. W. or in case they shall dis-
agree in making such valuation Then such a sum of money as
shall be settled by a third person to be chosen as umpire by
them the said arbitrators *And also* that he the said I. N. W.
shall and will accept and take a lease of the said dwellinghouse
shop and premises upon the terms aforesaid and at his own

I. S. agrees to
relinquish her
business ;

to grant lease
of premises.

I. N. W. agrees
to take busi-
ness, fixtures,
&c.,

to accept lease.

expense execute the lease and a counterpart thereof in which said lease shall be contained all usual and proper covenants and particularly a covenant for payment of rent as hereinbefore mentioned And shall and will on the day of next pay or &c. unto the said I. S. one third part of the amount of such valuation as aforesaid And shall and will give the joint and several bond of himself and the said (S.) as a security for the payment of the remainder of the sum at which the said stock &c. shall be valued by four equal successive annual instalments the first annual instalment to be paid on the day of 18 together with interest after the rate of 5*l.* per cent. per annum upon the remainder of the sum at which the said stock &c. shall be valued as aforesaid So that upon payment of each annual instalment of the principal the whole of the interest then due shall be paid to the said I. S. And the said (S.) in consideration of the premises and as surety for and on behalf of the said I. N. W. his son shall and will pay to the said I. S. the sum so agreed to be paid by the said I. N. W. as the third part of the amount of such valuation as aforesaid on the said day of instant And also shall and will join with the said I. N. W. in such security as aforesaid for the payment of the residue of the sum at which such stock fixtures utensils implements and goodwill shall be valued with interest as aforesaid In witness &c.

No. LX.
Good-will
(Business).

AGREEMENTS TO GUARANTEE.

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| <p>1. <i>Guarantee must be in Writing.</i>
<i>Exceptions to the Rule.</i></p> <p>2. <i>Consideration.</i></p> <p>3. <i>Consideration need not appear by Writing.</i></p> | <p>4. <i>Guarantee to or for a Firm to cease upon a change in the Firm, except in Special Cases.</i></p> <p>5. <i>Representation of Character.</i></p> <p>6. <i>Stamp.</i></p> |
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SECT. 1. By the 4th section of the Statute of Frauds an agreement to pay the debt of another, must, in order to give a cause of action, be in writing, *Saunders v. Wakefield*, 4 B. & Ald. 595; but if a party actually make payments for another, a responsibility may be inferred from the circumstances, without any promise in writing, *Shaw v. Woodcock*, 7 B. & C. 73; and if a party admits a binding guarantee by paying money into court, on a count charging him with it, it will not be necessary to prove a written promise, *Middleton v. Brewer*, 1 Peake, 15. See Chitty on Contracts, pp. 446–452, 5th ed.

Guarantee must be in writing.
Exceptions to the rule.

Agreements.

Consideration must appear.

2. Formerly the writing must contain the consideration for the promise as well as the promise itself, *Saunders v. Wakefield*, *ub. sup.*; therefore a promise to pay for goods to be supplied in future was good, because the supplying the goods was the consideration; but a promise to pay for goods already furnished was bad for want of such consideration, *Wood v. Benson*, 2 Cr. & J. 94; *S. C.* 2 Tyrw. 74; unless it was stated that the thing done in favour of a third party had been done at the guarantor's request, *Payne v. Wilson*, 7 B. & C. 423.

Consideration need not appear by writing.

3. No special promise to be made by any person after the 29th July, 1856, to answer for the debt, default or miscarriage of another person, being in writing, and signed by the party to be charged therewith, or by some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document, 19 & 20 Vict. c. 97, s. 3.

Guarantee to or for a firm to cease upon a change in the firm, except in special cases.

4. No promise to answer for the debt, default, or miscarriage of another made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default or miscarriage of a firm consisting of two or more persons or of a single person trading under the name of a firm, shall be binding on the person making such promise, in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties that such promise shall continue to be binding, notwithstanding such change shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise, 19 & 20 Vict. c. 97, s. 4.

Representations of character.

5. No action can be brought to charge any person by reason of any representation or assurance made or given relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent that such other person may obtain credit, money or goods upon, unless such representation or assurance be in writing, signed by the party to be charged therewith, 9 Geo. 4, c. 14, s. 6.

Stamp.

6. A guarantee will require a stamp or otherwise, according as a stamp is required for the principal contract or otherwise, *Warrington v. Furber*, 8 East, 242; *Watkins v. Vince*, 2 Stark. 368; but representations as to a person's credit are expressly exempted by the 9 Geo. 4, c. 14, s. 8, from all stamp duty.



No. LXI.

Agreement to guarantee the Payment of Goods furnished to a third Person.

No. LXI.
*Payment of
Goods
(third Person).*

Memorandum That in consideration of your agreeing to supply my nephew with goods in the way of his trade as a upon twelve months' credit and the advantage such credit will be to him I hereby guarantee and promise to be answerable for the amount at the end of that period or any time afterwards not exceeding in the whole the amount or sum of £ within one calendar month after demand but without prejudice to his own liability to pay the same and this promise or guarantee shall not be affected by any change in the firm of your house as to the retirement or addition of any partner or partners.

AGREEMENTS FOR A LEASE.

- | | |
|---|--|
| <p>1. <i>Agreement to be in Writing.</i>
 2. <i>Not a Substitute for a Lease.</i>
 3. <i>Agreement binding on Tenant in Tail, but not his Issue.</i>
 <i>On Husband, but not on Wife.</i>
 <i>On the Wife also.</i>
 <i>On Remainderman.</i>
 <i>On an Alien Artificer.</i>
 <i>On a Copyholder.</i>
 4. <i>Specific Performance.</i>
 5. <i>Agreements ought to be explicit.</i></p> | <p>6. <i>Covenants not to assign.</i>
 <i>To repair.</i>
 <i>To pay Rent.</i>
 <i>To pay Taxes.</i>
 <i>For Production of Lessor's Title.</i>
 7. <i>Duration of Term.</i>
 8. <i>Usual Covenants.</i>
 <i>Not to carry on Trade.</i>
 <i>As to intervening Accidents.</i>
 9. <i>Exemption from Stamp Duty.</i></p> |
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SECT. 1. An agreement for a lease, unless for a term not exceeding three years, and for which the rent reserved is at least two-thirds of the real value, is required by the Statute of Frauds, 29 Car. 2, c. 3, to be in writing, and signed by the party to be charged therewith, or his agent legally authorized. A steward has no general authority to enter into contracts for granting leases of farms for a term of years, *Collen v. Gardner*, 21 Beav. 540.

A paper sent to a solicitor as instructions to prepare a lease may be treated as the final agreement for the lease, if the evidence shows that it was only so sent to be put into a formal shape, but the act of so sending it is evidence to raise a *prima facie* presumption that it did not contain all that the parties meant, but might afterwards be modified by either of them, *Ridgway v. Wharton*, 6 H. L. Cas. 238; 27 L. J., Chan. 46.

For a Lease.

2. Parties are frequently let into possession under an agreement for a lease, and allowed to continue in possession without any more formal instrument being executed; but the practice has given rise to much litigation. A tenant holding under such an agreement has no security for his possession, as he is always liable to be evicted in an action at law, and the owner has no remedy by distress for non-payment of rent, but is driven to his action for use and occupation, unless rent has already been paid, which creates a tenancy from year to year, *Hamerton v. Stead*, 3 B. & C. 478; *Mann v. Lovejoy*, 1 Ry. & Mood. N. P. 355. Formerly an agreement for a lease was often construed to be an actual lease, which gave rise to much litigation and occasioned many rather conflicting judgments, especially upon the point as to whether a reference to a future lease was sufficient to prevent the instrument from taking effect as a present demise. By the act 8 & 9 Vict. c. 106, s. 3, all leases required by law to be in writing, made after the 1st of October, 1845, are void at law unless made by deed. This puts an end to all difficulty upon this subject, and the agreement under hand only will now operate as an agreement, however worded. See *Stratton v. Pettit*, 16 C. B. 420; *Drury v. Macnamara*, 5 Ell. & Bl. 612; *Tress v. Savage*, 4 Ell. & Bl. 36.

Agreement binding on tenant in tail, but not on his issue.

On husband, but not on wife.

On the wife also.

On remainderman.

On an alien artificer.

3. An agreement for a lease will in many cases not be equally binding on the parties as a lease would be. An agreement for a lease by tenant in tail under the 32 Hen. 8, c. 28, although binding on him, will not be binding on his issue, if he die without perfecting the agreement, 1 Ch. Ca. 171; 1 Lev. 239; Prec. Chan. 278; *Hinton v. Hinton*, 2 Ves. 634. The stat. 32 Hen. 8, c. 28, is now repealed, except so far as it relates to leases made by persons having an estate in right of their churches, 19 & 20 Vict. c. 120, s. 35. So an agreement by husband and wife seised in right of the wife under the former statute will not, it is apprehended, be binding on the wife or her heirs in the event of the husband dying before the execution of the lease, because the statute (which authorizes leases only) must be strictly construed, Cowp. 267; 2 Freem. 224; 1 Rop. Husb. & W. 96. If, however, a husband possessed of a term of years in right of his wife, enters into an agreement for an under-lease, and dies before the execution of the lease, such an agreement will, it seems, be binding on the wife, because term of years are not within the statute, *Stead v. Craigh*, 9 Mod. 42; *Druce v. Denison*, 6 Ves. 385. An agreement for a lease, under a leasing power, will be good against the remainderman, provided it is a contract to grant such a lease as the power warrants, *Campbell v. Leach*, Ambl. 749; *Shannon v. Bradstreet*, 1 Sch. & Lef. 72; *Blowe v. Sutton*, 3 Mer. 237; see 12 & 13 Vict. c. 26, and 13 & 14 Vict. c. 17. Although leases to alien artificers are void by the 32 Hen. 8, c. 16, s. 13, yet it has been held, that if an alien artificer occupies a house under an agreement, an action for use and oc-

cupation will lie against him, 1 Saund. 8, n. 1. See 7 & 8 Vict. c. 66, s. 5, as to leases to aliens. A copyholder cannot, by the custom of most manors, grant a lease for a longer period than a year, but with the licence of the lord he may grant a lease of his copyholds for any number of years. See Shelford on Copyholds, pp. 152—163. The Court of Chancery has power in certain cases to authorize leases of settled estates. See 19 & 20 Vict. c. 120. The power to authorize leases conferred by that act extends to authorize preliminary contracts to grant any such leases; and any of the terms of such contracts may be varied in the leases, 19 & 20 Vict. c. 120, s. 6. The Universities of Oxford, Cambridge and Durham, and the Colleges thereof, may enter into contracts for granting leases, and afterwards grant leases pursuant thereto, 21 & 22 Vict. c. 44, s. 12.

For a Lease.
On copyholder.

4. As to parol agreements for a lease, courts of equity will, notwithstanding the Statute of Frauds, enforce specific performance, where by so doing they discourage fraud and perjury, which it was the object of the statute to prevent, 1 Eq. Ca. Ab. 19; 2 Ch. Ca. 135; 1 Vern. 151; 2 Freem. 268. A delivery and taking possession may be a sufficient part performance of an agreement for a lease to exclude a defence founded on the Statute of Frauds, *Pain v. Coombs*, 1 De G. & J. 34. A mandamus will not be granted under 17 & 18 Vict. c. 125, s. 68, commanding the defendant to prepare a lease in accordance with an agreement to grant one, *Benson v. Paul*, 6 El. & Bl. 273.

Specific performance.

5. Agreements for a lease should be clear and explicit on all material points. This is so much the more important as it has been expressly decided, that nothing can be added by parol to an agreement which is reduced into writing, 1 Sugd. V. & P. 10th ed. 218. Where an agreement omits to specify the term or number of years for which the lease is to be granted, or if the rent be not specified, or the time when the term is to commence is omitted, or there is no mention respecting the payment of taxes, no parol evidence can be adduced to supply the omission, *Clinan v. Cooke*, 1 Sch. & Lef. 22; *Woollam v. Hearn*, 7 Ves. 221; *Pym v. Blackburne*, 3 Ves. 34; *Rich v. Jackson*, 4 B. C. C. 514; *The Marquis Townsend v. Stangroom*, 6 Ves. 334, n. So in an agreement for a building lease, the nature of the building must be specified, or the agreement cannot be enforced, *Mosley v. Virgin*, 3 Ves. 184.

Agreements ought to be explicit.

6. A covenant against assigning or under-letting is not deemed a usual covenant, and must therefore be expressly stipulated in the contract, if it is intended to be inserted in the lease, *Henderson v. Hay*, 3 B. C. C. 632; *Vere v. Loreden*, 12 Ves. 179; *Church v. Brown*, 15 Ves. 258. So under a covenant to repair, a lessee will be liable to rebuild if a house is burnt down, unless the clause be added, "damage by fire or tempest or other inevitable accidents excepted,"

Covenants not to assign.

To repair.

- For a Lease.* *Bullock v. Dommitt*, 6 T. R. 650; *Pym v. Blackburne*, 3 Ves. 34.
- To pay rent.* It is now usual to insert a covenant for insurance by the lessee, which obviates this question; but a tenant will still be liable under his covenant to pay rent, although the house is burnt down, unless it be stipulated in the contract that there should be a suspension of rent in case of accidents by fire, *All. 27*; *Monk v. Cooper*, 2 Stra. 763; *Belfour v. Weston*, 1 T. R. 312; *Baker v. Holzappel*, 4 Taunt. 45; *Holzappel v. Baker*, 18 Ves. 115. And the tenant has no equity to compel his landlord to expend the money received from an insurance office in rebuilding, *Leeds v. Cheetham*, 1 Sim. 146; his only remedy in that case being to give notice to quit, *Pindar v. Ainsley*, cited 1 T. R. 312; *Pym v. Blackburne*, 3 Ves. 34. A tenant holding premises upon condition of keeping them in good and tenantable repair, was held bound to reinstate them after being totally destroyed by an accidental fire, and it was decided that he could not escape from the liability to rebuild by declining any longer to hold the premises, *Gregg v. Coates*, 23 Beav. 33. A reservation of rent "free from all and all manner of taxes" is now held to extend to the land tax and all taxes subsequently imposed, *Bradbury v. Wright*, Dougl. 602; *Amfield v. White*, 1 R. & M. 246; *Sweet v. Seager*, 2 C. B. (N. S.) 119; *Smith v. Humble*, 15 C. B. 321; see 5 & 6 Vict. c. 35. Where an exception is intended to be made, it ought to be expressly stipulated in the agreement. An agreement for a lease contains no implied engagement for general warranty of the land, nor for delivery of an abstract of the lessor's title, *Gwillim v. Stone*, 3 Taunt. 433; *Temple v. Brown*, 6 ib. 60. The right of the lessee to inspect the lessor's title is however admitted in all cases, *Waring v. Mackreth*, Forr. 138; except in the case of a bishop, *Fane v. Spenser*, 2 Madd. 438; and specific performance of an agreement will not be enforced when the title is not clearly made out, a lessee being considered as a purchaser *pro tanto*, *Fildes v. Hooker*, 2 Mer. 424. But as in many cases lessors may object to produce their title, and in others it may be of great importance to the lessee to be assured of the title of his lessor, care should be taken to make this a part of the contract wherever the interests of either party require it.
- Duration of term.* 7. On the principle that deeds ought to be construed most in favour of the grantee, it has been decided, that where an agreement contains a power to determine a lease at the end of seven, fourteen, or twenty-one years, it shall be in the power of the lessee to determine, and not of the lessor, unless it be expressly so stipulated, *Dann v. Spurrier*, 3 B. & P. 399; *Doe v. Dixon*, 9 E. 15; *Price v. Dyer*, 17 Ves. 363; see *Giddens v. Dodd*, 3 Drew. 485.
- Usual covenants.* 8. Under the clause "usual covenants" are to be understood such as are usual in reference to the nature of the property, the term "usual" being the same as "reasonable," "fair." Where, in an

agreement for a lease, it is stipulated that it shall contain "such covenants as are usual in leases of lands," &c., in the neighbourhood, it appears that a court of equity will enforce specific performance, *Boardman v. Mostyn*, 6 Ves. 467. Under a contract for a lease of a mill, to contain "all usual and necessary covenants and provisoes," and particularly a covenant, on the part of the lessee, to keep the mill in good tenantable repair: it was held, that the lessee was not entitled to have introduced into the covenant the words "damages by fire or tempest only excepted," *Sharp v. Milligan*, 23 Beav. 419. As a school has been held to come under the general clause, "not to carry on any trade," it must be expressly stipulated, if any exception is to be made. Likewise, as it appears doubtful whether, if a house be destroyed before the tenancy commences, a person shall be bound by his contract, it is advisable to make provision for this event in the agreement, *Phillipson v. Leigh*, 1 Esp. 397.

For a Lease.

Not to carry on any trade.

As to intervening accidents.

9. A memorandum or agreement for granting a lease or tack at rack rent, under the yearly rent of 5*l.*, is exempted from the usual agreement stamp, *ante*, p. 81: but it has been held that such an agreement is not within the exception, if the interest agreed for be a beneficial one, *Doe v. Boulcot*, 2 Esp. 595. (As to Leases, see further, *post*, LEASES.)

Exemption from stamp duty.

No. LXII.

Agreement for the Lease of a House. (General Precedent.)

No. LXIII. *Lease of a House.*

Articles of &c. Between (*lessor*) of &c. of the one part and (*lessee*) of &c. of the other part whereby the said (*lessor*) agrees by indenture of lease to be executed on or before the day of next ensuing to demise and let unto the said (*lessee*) *All that* messuage or tenement with the coach-house stable garden &c. [*Here describe parcels particularly.*] *To hold* the same to the said (*lessee*) his executors and administrators from the day of next ensuing for the term of years (*a*) at the yearly rent of £ clear of all taxes parliamentary parochial or otherwise (*b*) and payable quarterly at the four usual festivals In which lease shall be contained covenants on the part of the

Parties.

Lessor agrees to demise.

Term.

Rent.

Covenants on the part of the lessee to pay rent.

(*a*) "Determinable at the end of seven fourteen or twenty-one years." And if it be so agreed, add "at the will as well of the said [*lessor*] as of the said [*lessee*]." Sect. 7. Proviso for determining the lease.

(*b*) "Except the land-tax or sewers-rate," &c. [*as the case may be*]. Sect. 6.

No. LXII. <i>Lease of a House.</i>	said (<i>lessee</i>) to pay the rent (<i>a</i>) to repair the premises (<i>b</i>) and to deliver up the same at the end of the said term in good and
To insure.	tenantable repair (<i>c</i>) <i>And also</i> to insure the said premises from loss by fire during the said term in one of the insurance offices in London or Westminster to be approved of by the said (<i>lessor</i>)
To rebuild.	for the sum of £ <i>And also</i> to rebuild or repair the said
To repair.	premises if destroyed or damaged by fire or otherwise <i>And</i>
	<i>also</i> not to assign (<i>d</i>) or underlet the said premises without
	the licence of the said (<i>lessor</i>) with all other usual (<i>e</i>) and rea-
	sonable covenants and a proviso for the re-entry of the said
	(<i>lessor</i>) his heirs and assigns in case of non-payment of the rent
	for the space of days after either of the said days of
	payment or of the non-performance of the covenants (<i>f</i>) <i>And</i>
Covenants on the part of the lessor.	that there shall also be contained in the said lease a covenant
	on the part of the said (<i>lessor</i>) his heirs executors and admin-
	istrators for quiet enjoyment by the said (<i>lessee</i>) his executors
	and administrators of the said premises during the said term
	upon payment of the rent and performance of the covenants (<i>g</i>)
Expense of preparing agreements and lease.	<i>And</i> (<i>h</i>) it is hereby agreed by the said parties hereto that the
	expense of preparing these presents and the said lease and a
	counterpart thereof shall be paid and borne by the said parties
	equally <i>And</i> (<i>i</i>) <i>lastly</i> it is mutually agreed by and between
Suspension of rent.	(<i>a</i>) "Yearly and every year during the said term unless the house should be burnt down or destroyed by any inevitable accident." Sect. 6.
Lessee not to rebuild.	(<i>b</i>) It is usual to insert the exception, "damages by fire tempest and other inevitable accidents excepted." Sect. 6.
	(<i>c</i>) If the covenant to insure be omitted, and the above exception be inserted, then add "except as last excepted."
	(<i>d</i>) As to this covenant, see sect. 6. And also, if it be so agreed, add "nor carry nor suffer to be carried on upon the said premises any kind of trade," or "any offensive or noisy trade." See sect. 6.
	(<i>e</i>) As to usual covenants, see sect. 8.
	(<i>f</i>) And if it be a public-house, add "and also a like proviso for the re-entry of the said [<i>lessor</i>] in case the said [<i>lessee</i>] shall suffer the said premises to be converted into a private house or shop without the consent in writing of the said [<i>lessor</i>] for that purpose first obtained." This is now so general a stipulation in such leases that it has been held that it would be included under the words "all usual" covenants, <i>Bennett v. Womach</i> , 7 B. & C. 627.
	(<i>g</i>) As to the production of the lessor's title, see sect. 6.
	(<i>h</i>) Or, as more usual, "the said [<i>lessee</i>] doth hereby agree to accept such lease as aforesaid and to execute a counterpart thereof and to pay the expense of these presents and also of the said lease and counterpart."
	(<i>i</i>) See sect. 6.

the parties hereto that the destruction of the said premises by fire or other cause before the execution of the said lease shall not [or "shall," *as the case may be*] in anywise alter or vacate this contract.

No. LXII.
*Lease of a
House.*

In witness whereof (a) the said parties have hereunto set their hand the day of 18

No. LXIII.

Agreement for the Lease of a Farm.
(General Precedent.)

No. LXIII.
*Lease of a
Farm.*

Articles of &c. Between &c. [see *last precedent*] The said (*lessor*) doth hereby agree to grant and the said (*lessee*) to accept a lease of *All that* farm and lands belonging to the said (*lessor*) situate &c. *To hold* the same for the term of years from the day of now last past at the yearly rent of clear of &c. to be paid half yearly on the day of and the day of the first payment to be made on the day of now next ensuing *And* the said indenture of lease shall contain the following covenants on the part of the said (*lessee*) that is to say *To keep* the tillage of the said lands in due course of husbandry and to manage the same in a good and husbandmanlike manner *Not to sow or set* more than acres of the said premises with potatoes carrots cabbages or other vegetables except turnips half of which at least are to be fed off and not carried off *To keep and preserve* the buildings gates and fences belonging to the said premises in good and sufficient repair during the said term [except the same be damaged by fire or any other inevitable accident] *To cleanse and scour* yearly roods of hedges and ditches where it is most wanted *Not to grub up* destroy or injure any of the trees growing on the said premises *Not to sell* any straw hay or manure during the said term *To give* a fresh coat of manure to every acre of the arable land once in years and to every acre of the pasture land once in years *To allow* the said (*lessor*) and his gamekeeper and bailiffs to come upon any part of the

Covenants in
the lease on
the part of the
lessee.

(a) If the agreement be entered into by the agent of either party, say "the said [*lessor*] or [*lessee*] has hereunto set his hand by the said [*agent*] his attorney lawfully constituted." [As to signing agreements, see AGREEMENTS, s. 5].

No. LXIII.

*Lease of a
Farm.*Covenants on
the part of the
lessor.

said grounds hereby demised at any time he or they may think proper for the purpose of hunting shooting coursing or killing of game [*add covenant to insure, not to assign, for re-entry on non-payment of rent, &c. as in the last precedent*] And also the following covenants on the part of the said (*lessor*) That the said (*lessee*) may at all times dig marl and clay for the improvement of the lands and also sufficient gravel to keep the roads in repair And also that he may cut underwood and brushwood and lop pollard-trees above the age of for reasonable estovers and as much rough timber as may be needful for the repairs of the said premises And also [*covenant for quiet enjoyment, as in the last precedent*]. In witness &c.



No. LXIV.

Letting a Farm.

No. LXIV.

Agreement for Letting a Farm.

An Agreement made this day of 185 between (*landlord*) of the one part and the (*tenant*) of the other part The said (*landlord*) in consideration of the rent hereinafter reserved and of the conditions and agreements to be performed by the said (*tenant*) doth hereby agree to let to farm and the said (*tenant*) doth hereby agree to rent and take to farm the mesuage farm lands and premises described in the schedule hereunder written at the rent and under the terms and conditions hereinafter expressed (that is to say)

Tenancy from
year to year.

1. The said premises are let from year to year commencing on the 29th day of September 185 at the annual rent of £ clear of all deductions (except the land-tax) to be paid quarterly on the 25th day of March the 24th day of June the 29th day of September and the 25th day of December the last payment of rent previous to the tenant quitting to be made on the 1st instead of the 29th day of September The (*tenant*) to pay all rent-charges in lieu of tithes and all rates and taxes (except land tax) *Provided always* that notwithstanding any of the provisions herein contained the tenancy may be determined at the end of the first or any subsequent year by either party giving six calendar months' clear notice to quit.

Reservation of
timber.

2. The said (*landlord*) reserves all timber trees pollards poles and underwoods of every description with full power of entering on the said premises to cut down convert carry away and

manage the same and to enclose and plant any portion of the said premises due compensation being made with a free passage and right of way to all woods plantations and coverts.

No. LXIV.
Letting a Farm.

3. The said (*landlord*) reserves all game wild fowl and fish with full liberty for himself servants and others having his permission to enter on the said premises for the purpose of sporting killing or taking the same and full liberty at all times to view the state and condition of the premises.

Game.

4. The tenant not to cut down lop or crop any of the timber trees pollards poles or underwood but to preserve the same and all fruit trees from injury.

Tenant not to cut trees.

5. The tenant to preserve all the hedges and not to lop or crop the same except against roads and not to cut the hedges less than years' growth or at any improper season of the year And upon cutting the hedges to well scour and cleanse out the ditches adjoining thereto and to back fence those cut in the pasture lands for the space of three years at least after such cutting and where ditches are required and they are not of sufficient depth to carry off the water then to make them efficient for such purpose.

To preserve hedges, &c.

6. The tenant to give notice to the said (*landlord*) or his agent in the month of October or November of all the hedges intended to be cut that season to the end that the young trees or saplings may be marked to be left growing and to pay five pounds for every tree or sapling that is cropped or injured with the knowledge or consent of the said tenant.

Notice to cut hedges.

7. The tenant to reside in the dwelling-house belonging to the said farm and to keep and leave the house and all the out-buildings (accidents by fire or tempest excepted) and also all walls sheep and cattle pens gates stiles pales rails hedges ditches ways and watercourses belonging to the said premises in good order and repair being found by the said (*landlord*) timber in the rough state bricks or stone lime stone tiles or slates necessary for the purpose the said (*tenant*) finding at his own expense all other materials workmanship and carriage.

To reside in farm house.

8. The tenant not to plough or to convert into tillage any part of the said farm which is now meadow pasture or swade under a penalty of fifty pounds per acre additional rent and at that rate for any quantity greater or less than an acre and not to mow or cut any of the said lands twice in any one year for hay or seed nor any of the meadows where not properly watered

Not to plough pasture land.

No. LXIV. more than two years in succession without manuring the same
Letting a Farm. without the consent in writing of the said (*landlord*).

Mode of cultivation pre-
 scribed.

9. The tenant to manage and cultivate the farm in a good and husbandlike manner according to a four or five-course system as hereinafter specified The said (*tenant*) to spend yearly during his tenancy all the hay straw fodder and chaff on the said farm (except as hereinafter mentioned, and not to sell any part of such hay straw fodder or chaff from off the said premises (except straw for the use of the said (*landlord*) as hereinafter mentioned) and not to use any stubble for fuel.

10. The tenant on quitting to leave on the premises one half of the hay the produce of the last year and one half of the wheat straw properly stacked up to be taken at a spending price by the said (*landlord*) or by his in-coming tenant.

11. The said (*tenant*) subject to the provisions of clause nine to properly seed or lay down (with a crop of barley after turnips) in a good clean state of cultivation one tenth part of the arable land with sainfoin and so keep the same And previous to ploughing or breaking up any part of the said sainfoin lay to seed down the like quantity (as near as the size of the fields will admit) in the same manner as before described and to leave that quantity when he quits the farm And upon ploughing or breaking up any part of the sainfoin lay the same to be pared and burned for a turnip crop and the land to be then brought into a regular four-course system hereinafter described No such sainfoin lay to remain unbroken up more than five years.

12. The tenant subject to the provisions of clause nine to cultivate the remaining part of the arable land not sown with sainfoin in a regular four-course system or five-course system the four-course system being as follows the land first to be properly and effectually fallowed for turnips mangel wurzel or other green crop (which crops are to be consumed on the farm except where the land in the opinion of the said (*landlord*) or his agent shall be too heavy for that purpose) second barley or oats third not less than one-eighth with grass seeds and the remaining part with beans peas or pulse the same to be well hoed twice at least and fourth wheat or other crop of corn or grain and then to begin the course again by a winter's fallow for turnips mangel wurzel or other green crop all such green crops to be consumed on the premises except as aforesaid The five-course system is the same as above except that the tenant is to

be at liberty to let the seeds lie two years No deviation will be allowed from this course of tillage. No. LXIV.
Letting a Farm.

13. The tenant to weed the grain regularly every year and to mow or cut down all thistles or rushes to prevent their seeding.

14. The tenant not to grow in any one year more than one-twentieth part of the said arable land with potatoes and these to be consumed on the farm not to seed more than one-half of the clover crop and not to grow more than one acre of turnip seed without the consent in writing of (*landlord*) previously obtained. Restriction as
to particular
crops.

15. The tenant not to let assign or part with the possession of any part of the said farm or premises (except cottages) or his interest therein under a penalty of twenty pounds per acre additional rent as liquidated damages. Not to assign.

16. The tenant if living within ten miles of to perform for the said (*landlord*) at the rate of one day's team work with two horses and one proper person for every fifty pounds of rent when required (except at hay and corn harvest) without being paid for the same. To perform
work for land-
lord.

17. The tenant if living within ten miles of when required to find and provide for the said (*landlord*) and to deliver the same at two tons of good clean wheat straw for every fifty pounds of rent and to be paid for the same at the rate of thirty-five shillings per ton. To deliver
straw.

18. The tenant upon quitting the said farm to leave in the yards of the same farm all the hay straw and fodder arising from the crop of the last year converted into manure for the use of the said (*landlord*) or his incoming tenant (except as before excepted) without any compensation for the same and to be allowed the use of the barns and yards till the 25th day of March following for the purpose of consuming and converting the same therein but if the grain is not all then thrashed out to be allowed the use of the barns till the 24th day of June leaving the straw and chaff for the use of the in-coming tenant. To leave hay,
&c.

19. The tenant after notice to quit the said farm to allow the said (*landlord*) or his in-coming tenant to enter upon the clover lays or grass or lands that shall be in course to be sown with wheat on or after the first day of July for the purpose of manuring ploughing and sowing the same and the liberty of carrying out the manure from the yards or other places where it may be found and from that time to have convenient stable room for Power for land-
lord to enter.

No. LXIV. his horses and straw for litter and a sleeping room for his servants without any compensation.

Letting a Farm.

Tenant to sow seeds.

20. The tenant previous to quitting the said farm in the last year of his occupancy to sow the lands that shall come and be in course to be so sown with clover grass seeds or sainfoin with his spring crops of grain at the option of the said (*landlord*) or of his in-coming tenant and to fallow and properly prepare and sow with turnips mangel wurzel or other green manure crop at the option of the said (*landlord*) or of his in-coming tenant the lands that shall be in course to be so sown and to well hoe the same and at the request of the said (*landlord*) or of his in-coming tenant to manure plough and sow the clover lays or the lands that shall be in course to be sown with wheat being paid for such acts of husbandry *Provided nevertheless* that the said (*landlord*) or his in-coming tenant shall have the option to enter upon the said turnip lands on the 25th day of March to do the said acts of husbandry.

Allowance to be made to tenant on quitting.

21. The tenant upon quitting the said farm to be paid for the clover and grass seeds and sainfoin which he has sown with the barley or oats in the spring and for the turnips mangel wurzel or other green crop which he has sown and also for any wheat he has sown according to a valuation made in the usual manner But the said (*landlord*) or his in-coming tenant shall be at liberty at his or the said tenant's option to provide the grass clover sainfoin seeds and wheat and the said (*landlord*) or his in-coming tenant shall be at liberty with his own or the said tenant's servants and horses to sow and harrow in the same and also to fallow and prepare and sow with turnips mangel wurzel or other green manuring crop the lands which shall be in course to be so sown and to enter the yards and take out the dung from the same at any time after the 25th day of March in the said last year without paying anything to the going off tenant for such liberty to sow grass seed provided the tenant shall not after ten days' notice from the said (*landlord*) or his agent or the in-coming tenant do and perform the several acts aforesaid in a good and husbandlike manner.

Number of sheep to be kept.

22. The tenant in the last year of his holding to keep as many sheep on the said farm as he has been accustomed to keep in preceding years.

Power of re-entry for non-payment of rent.

23. And it is hereby mutually agreed in case the rent hereby reserved shall be in arrear for twenty-one days after the same

shall have become due having been first lawfully demanded and no sufficient distress being found upon the premises hereby agreed to be demised that then the said (*landlord*) shall and may enter upon the said premises or any part thereof in the name of the whole and repossess and enjoy the same as if this Agreement had not been made. No. LXIV.
Letting a Farm.

Witness the hands of the parties the day and year first above written.

Witness to the signing by

Schedule of Messuage, Farm and Lands in the Parish of _____, in the County of _____, referred to in the before-written Agreement.

No. on Map.	Names of Fields.	Description of Fields.	Quantities.		
			A.	R.	P.
1	House, Outbuildings, Garden and Yards	1	0	30
2	The Home Meadow	Pasture....	10	2	20
3	The Home Ground	Arable	12	1	20

—◆—

Agreement by Trustees for letting Premises during the Minority of a Child, see post, LEASES.

No. LXV.

Agreement to Let a Furnished House or Apartments.

Obs. A covenant that the landlord may distrain for rent is not necessary in an instrument of this kind, as it is held that a distress may be had upon any goods of the tenant, as well for furnished as unfurnished lodgings, *Newman v. Anderton*, 2 N. R. 242.

Memorandum of an agreement Between (*lessor*) of &c. of the one part and (*lessee*) of &c. of the other part as follows That the said (*lessor*) agrees to let and the said (*lessee*) to take *all that* messuage or dwelling-house situate &c. [or “*all those* the first and second floors belonging to &c.” *as the case may be*] together with all the furniture fixtures crockery and all other things mentioned and comprised in the schedule hereunder written for the

No. LXV.
To Let Furnished House.

No. LXV. space of months to be computed from the date of these
To Let Fur- presents at the rent of £ per quarter [*or* “month”] [to be
nished House. paid quarterly (*or* “monthly”)] *And* the said (*lessee*) agrees
that at the expiration of the said months he the said (*lessee*)
shall and will deliver up the said dwelling-house [*or* “first and
second floors &c.”] *together* with the fixtures and furniture as
aforesaid in as good a condition as the same now are reasonable
wear and tear thereof excepted and shall and will replace any of
the crockery and china or other utensils that shall be broken or
otherwise damaged *In witness &c.*

The schedule or inventory referred to in the above
agreement.

—◆—

No. LXVI.

No. LXVI.
Building Lease.

Agreement for a Building Lease or Building Leases.
(General Precedent.)

Parties.
Agreement to
grant leases at
certain periods.

Articles of &c. Between (*intended lessor*) of &c. of the one part
and (*intended lessee*) of &c. of the other part as follow that is to say
First the said (*lessor*) in consideration of the rents and covenants
hereinafter reserved and contained and on the part of the said
(*lessee*) to be paid and performed doth hereby agree with the
said (*lessee*) his executors administrators and assigns That when
and so soon as the messuages or tenements hereinafter men-
tioned shall be built and covered in the areas thereof formed
and the foot and carriage ways and pavements finished as here-
inafter is mentioned to the approbation of the surveyor of the
said (*lessor*) then he the said (*lessor*) shall and will by good and
sufficient indentures of lease to be prepared by the solicitor of
the said (*lessor*) at the costs and charges of the said (*lessee*)
grant and demise unto the said (*lessee*) his executors adminis-
trators and assigns *All that* piece or parcel of ground &c.
situate &c. which said pieces or parcels of ground are respec-
tively delineated in the plan hereunto annexed and are therein
marked with letters A A A &c. and also the several messuages
or tenements to be erected and built thereon with their appur-
tenances for the term of ninety-nine years to be computed from
next ensuing at the several rents following that is to say
for the ground whereon the six houses are hereinafter agreed to
be erected within three years from 18 at the rent of a

Parcels.

Term.
Rents.

peppercorn for the first three years and at the several yearly rents to be apportioned as hereinafter is mentioned amounting together in the whole to the yearly rent or sum of £ during the remainder of the said intended term And for the ground whereon the six houses are as hereinafter agreed to be erected within four years from &c. And for the ground &c. [*here set out as before, varying in the numbers of houses, years and rents*] the same rents amounting in the whole to the sum of £ to be paid quarterly clear of the land tax sewers rate and all other taxes rates assessments and impositions whatsoever parliamentary parochial or otherwise which the said premises are or may hereafter be liable to (the property tax only excepted) (a) in consideration whereof the said (*lessee*) doth for himself his executors administrators and assigns covenant and agree with the said (*lessor*) his heirs and assigns in manner following that is to say that he the said (*lessee*) his executors or administrators shall and will at his and their own proper costs and charges under the inspection and to the approbation of the surveyor of the said (*lessor*) well and substantially build and cover in on the said pieces or parcels of ground second-rate messuages or tenements within the respective periods following that is to say six messuages or tenements on the piece or parcel of ground &c. [*here set out the buildings on the several pieces or parcels of ground, and the times when they are to be built and covered in*] which said messuages or tenements shall be built and finished conformably in every respect to the plan and elevation drawn in the margin of these presents and the several floors or stories thereof shall be of the several heights in the clear following that is to say the basement story feet &c. and they shall be feet in front and feet in depth And also that the said houses shall be built with hard bricks and all other materials equally good and shall be carried up and continued in every respect agreeably to the Act of Parliament for building houses in the cities of London and Westminster And the said (*lessee*) his executors or administrators shall and will make areas to the

No. LXVI.
Building Lease.

Payable quarterly, clear of all taxes.

Agreement by lessee to build and cover in certain messuages,

conformably to the plan,

with good materials;

to make areas;

(a) If it be so agreed, say, "And further that the said (*lessor*) his heirs or assigns shall at his own expense within days from the date hereof furnish the solicitor of the said (*lessee*) with an abstract of his title to the said pieces or parcels of land and also permit him to inspect the deeds and evidences thereof so far as may be requisite to show the authority of him the said (*lessor*) to grant the said leases in consideration whereof, &c." As to this clause, see AGREEMENTS for a Lease, sect. 6.

No. LXVI.	said houses	feet wide in the clear and inclose the same with
<i>Building Lease.</i>	a Portland stone kirb and iron rails	<i>And</i> shall slate the roofs of
to slate the roofs ;	the houses and close board the same and make good lead or iron	
to make foot-ways and pavements ;	water pipes to convey the water into the drains	<i>And also</i> make
to pave carriage ways.	a footway to the said several houses	feet in width and pave
Apportionment of rents ;	the same with good Yorkshire paving and a granite kerb	<i>And</i>
	<i>also</i> pave the carriage way in front of the said houses	<i>And</i> it is
	hereby further agreed that the said rent shall be apportioned and	
	divided in the leases so to be granted as aforesaid at the rate of	
	shillings per foot on the front of each house unless the said	
	(<i>lessor</i>) his heirs or assigns and the said (<i>lessee</i>) his executors or	
	administrators shall agree that the same shall be otherwise ap-	
	portioned	<i>And</i> the said (<i>lessee</i>) doth also hereby agree to accept
	such leases to be granted as aforesaid and to execute counter-	
	parts thereof and to pay the expenses of preparing these presents	
Covenants in leases.	and the said leases and counterparts (<i>a</i>)	<i>And</i> in the said leases
To finish the buildings ;	shall be contained the following covenants on the part of the said	
to pay rent and taxes ;	(<i>lessee</i>) that is to say to complete the said messuages or tenements	
to repair ;	in a substantial and workmanlike manner with all proper fixtures	
to paint ;	and fastenings to the same	<i>Also</i> to pay the said rent and the
to insure ;	land tax and all other taxes rates assessments and impositions	
	whatsoever payable in respect of the said premises hereby agreed	
	to be demised as aforesaid	<i>Also</i> to repair amend support and
	keep the same premises at all times during the said term with or	
	without notice from the said (<i>lessor</i>) his heirs or assigns in good	
	and substantial repair	<i>Also</i> to paint the external wood and
	iron work of the same premises twice in oil colours every	
	fourth year	<i>Also</i> to insure the premises for the full value of
	so much thereof as can be damaged by fire in some public	
	office of insurance from fire in London or Westminster and to	
	keep the same so insured during the said term and to produce	
	and show to the said (<i>lessor</i>) his heirs or assigns or his or their	
	steward agent or receiver of rents for the time being from time	
	to time the receipts given by or on the behalf of such office	
	acknowledging the payment of the premiums on the policy	
	whereby the same premises are to be insured for the succeeding	
to rebuild in case of fire ;	year	<i>And also</i> in case any of the dwelling-houses erections or

(*a*) Sometimes instead of enumerating the covenants, it may be only necessary to say, "All such covenants provisoes and agreements as are inserted in the lease granted by the said [*lessor*] to A. B. &c., except &c." [*as the case may be*].

buildings should be destroyed by fire to rebuild or substantially repair the same according to the original plan *Also* to pay a fair and just proportion of all expenses and charges for renewing or repairing pavements renewing cleansing or repairing walls gutters pipes drains and watercourses which shall be used in common by the occupier of the demised premises and the occupiers of any other messuages or dwelling-houses already erected or hereafter to be erected on any part of the now estate of the said (*lessor*) or of any other person near or adjoining thereto *Also* to leave the premises at the end of the said term hereby agreed to be demised in good and substantial repair together with all marble and other chimney-pieces mantel-pieces hearths covings jambs foot-pieces and slabs sash and other windows casements window-shutters doors locks keys bolts bars and all other fastenings whatsoever also marble and other water-closets cisterns and things thereunto belonging and all wainscot partitions fixed presses dressers shelves drawers pipes pumps posts pales and rails and other fixtures fixed or fastened to the premises or which shall be found thereon or on any part thereof during the last seven years of the said term *Also* to permit the said (*lessor*) his heirs or assigns and his or their respective agents surveyors and workmen to enter upon the said premises hereby agreed to be demised at any time or times during the said term for the purpose of surveying the same and examining if any and what repairs are or may be wanting and to repair within three calendar months to the approbation and satisfaction of the surveyor for the time being of the said (*lessor*) every defect which shall be found upon such survey and of which notice in writing shall be given at or upon the said premises *Also* to permit the said (*lessor*) his heirs or assigns or their respective agents surveyors and workmen to enter into and upon the said premises or any part thereof at any time or times during the last seven years of the said term for the purpose of taking a schedule or schedules of the fixtures thereon or upon any part thereof *Also* to prevent the said (*lessee*) his executors administrators or assigns from cutting maiming or injuring any of the principal timbers or walls of the said building or from letting or converting the same into any shop for trade, or suffering any open or public show of business therein without the licence of the said (*lessor*) his heirs or assigns in writing for that purpose first had and obtained and from committing or suffering any annoyance to the other lessees or occupiers of any other messuages or dwelling-houses lands and hereditaments of

No. LXVI.
Building Lease.

to contribute
towards repair-
ing pavements,
&c.;

to leave pre-
mises in good
repair.

To permit
lessor to survey
the premises.

No. LXVI.
Building Lease.

Disputes to be
settled by arbi-
tration.

or belonging to the said (*lessor*) his heirs or assigns near or adjoining to the said premises hereby agreed to be demised Also a clause for re-entry on non-payment of the rent days after each day of payment And all other clauses covenants and agreements usual or necessary to be inserted in leases of the like kind And also a covenant on the part of the said (*lessor*) his heirs or assigns for the quiet enjoyment of the premises hereby agreed to be demised against any person or persons claiming under him or them the said (*lessee*) his executors administrators and assigns paying the rents and performing the covenants and agreements hereby on his part agreed to be paid done and performed And it is hereby lastly agreed that if any doubt dispute or difference shall happen as to any covenant or agreements in the said intended lease to be contained or the construction of these presents in respect thereof the same shall be referred to two indifferent persons to be respectively named by each party as arbitrators between them and in case such arbitrators shall not make their award in writing within days after reference to them made the same shall be referred to a third indifferent person to be forthwith named and appointed by the said two arbitrators as umpire to determine the same within days next thereafter and which submission shall at the instance of either of the parties hereto be made a rule of her Majesty's Court of Queen's Bench at Westminster.

In witness &c.



No. LXVII.

No. LXVII.
Under-Lease.

*Agreement from the Lessee to demise Ground held by him
under the foregoing Agreement.*

Agreement to
let

and grant lease.

Articles of Agreement made and entered into Between (*lessee*) of &c. of the one part and (*under-lessees*) of &c. of the other part as follows The said (*L.*) in consideration of the rent and covenants hereinafter agreed to be paid and performed doth hereby agree to let unto them the said (*U.*) and to each of them their respective executors administrators or assigns when and as soon as they shall have erected and built the messuages and tenements hereinafter covenanted by them to be erected and he the said (*L.*) shall be lawfully enabled thereunto to grant and execute to them a good and valid lease or demise by indenture of *All that* &c. as the same is more particularly described in the

plan drawn in the margin of these presents with all ways paths passages lights easements waters watercourses profits and appurtenances whatsoever to the said premises belonging or anywise appertaining *To hold* the same piece or parcel &c. unto the said (U.) their respective executors administrators and assigns as tenants in common and not as joint tenants from now last past for and during and unto the full end and term of years and three quarters of another year at and under the yearly rent of £ payable quarterly for the first three years of the said term and at and under the yearly rent of £ payable quarterly during the then remainder of the said term clear of the land tax sewers rate and all other rates taxes and assessments whatever [the property tax only excepted] *And* it is hereby agreed that in such lease shall be contained all and every the like covenants clauses provisoes conditions restrictions and agreements as are contained in the lease by virtue whereof the said (L.) shall then hold the said premises [except &c.] *And also* a covenant for the said (L.) his executors administrators and assigns to indemnify them the said (U.) their executors administrators and assigns respectively from the payment of any other or former rent or rents than those which shall be reserved by the said intended lease and from all costs and damages by reason of the nonpayment thereof and all other demands whatsoever *And* the said (U.) for themselves and their respective executors &c. do hereby agree with the said (L.) his &c. to take the said premises &c. from &c. for the said term at the yearly rents aforesaid and that they shall and will pay the said rents in time and manner aforesaid clear of all taxes &c. as aforesaid *And also* shall within the space of years to be computed from the day of last past erect build and set up upon the said piece or parcel of ground hereby agreed to be demised one messuage or tenement conformably in every respect to the plan &c. [See last precedent] *And also* that the said house shall be built &c. *And* that the said (U.) shall and will make areas &c. and slate &c. *And also* make a footway &c. *And also* pave &c. *And* the said (U.) do also hereby agree to accept &c. [See last precedent] *And* the said (L.) doth hereby further agree with the said (U.) that the said (U.) well and truly paying the aforesaid yearly rents and performing and keeping all and singular the covenants on their parts and behalves hereinbefore expressed shall and will until the said (L.) shall duly execute and deliver to them or one of them the said intended lease peaceably and

No. LXVII.

Under-Lease.

submit to the inspection of the said A. B. a plan and elevation of the dwelling-house outhouses and appurtenances thereon to be erected for his approbation And when and so soon as such plan and elevation shall have been approved by him shall and will forthwith at his own proper costs and charges proceed to erect cover in finish and complete within the space of six months now next ensuing in a substantial and workmanlike manner a good and substantial brick messuage or dwelling-house with suitable chaise-house stables offices fences and walls agreeably to the said plan so approved And that the dwelling-house shall be placed at not less than ninety feet from a private road intended to be made on the north-east side of the said land at the expense of the said A. B. and that no building which shall be erected at more than the space of forty feet beyond the back line of the back front of the said dwelling-house shall be built of any height above twenty feet from the surface of the ground And that the said C. D. shall lay out and expend in the building of the said dwelling-house exclusive of all other erections a sum of not less than £ and shall and will forthwith erect a park paling of oak of five feet in height from the surface of the ground on the sides of the said piece of land so staked out and agreed to be taken by him as aforesaid.

In witness &c.



No. LXIX.

Agreement to occupy a Cottage.

It is agreed the day of 18 Between A. B. of &c. of the one part and C. D. of &c. of the other part as follows That the said C. D. shall and may occupy the cottage of the said A. B. situate in aforesaid late in the occupation of with its appurtenances for and during so long time as he the said C. D. shall work for the said A. B. and no longer and that when the said A. B. shall cease to employ him the said C. D. he the said C. D. shall and will forthwith quit and yield up the possession of the said cottage with the appurtenants unto the said A. B. And if the said C. D. fail or neglect so to do it shall be lawful for the said A. B. and his assigns or any person or persons whom he or they may appoint to enter into the said cottage and to turn and put out the said C. D. and his family and

No. LXIX.

To occupy a Cottage.

Leave to occupy while employed by lessor.

Lessor may turn out tenant.

No. LXIX. furniture and other things in the same manner as he might have
 To occupy a done under a writ of possession *Witness &c.*
 Cottage.

Witness to the
 signatures.

Agreement by
 tenant to give
 up cottage.

Mr. A. B. having agreed that I may occupy his cottage situate
 at late in the occupation of while I work for him I
 hereby promise to pay him the sum of £20 if I neglect or delay
 to quit and yield up the possession of the said cottage after I
 shall have ceased to work for him or he shall have discharged
 me from his service. *Witness my hand [or "my mark"] &c.*

Witness

ARTICLES OF AGREEMENT BEFORE MARRIAGE.

- | | |
|---|---|
| 1. <i>Validity of Articles.</i> | 3. <i>Settlement according to the Articles.</i> |
| 2. <i>Parol Agreements supported in Equity.</i> | |
| | |
| | 4. <i>What can and cannot be added to the Articles.</i> |



Validity of
 articles.

SECT. 1. Where the minority of either of the parties, or any other circumstance, prevents the immediate execution of the settlement, articles are sometimes entered into as a preliminary to a future settlement. Nor is it necessary that they should be drawn up in the form of an agreement to make them binding in equity. Bonds entered into for making settlements are considered as good marriage articles. So likewise letters, provided they contain an absolute promise, and sufficiently define the terms of agreement, *Randal v. Morgan*, 12 Ves. 67. As the personal estate of a female, whether of age or not, vests in her husband upon her marriage, the settlement agreed to be made by the husband is for her advantage, and is in fact the husband's settlement and not the wife's, see *Simson v. Jones*, 2 Russ. & Mylne, 376; and the same rule appears to prevail with respect to the chattels real of the wife. As to choses in action of the wife, if not reduced into possession by the husband, the articles will not bind them, see *Borton v. Borton*, 13 Jur. 247. As to real estate of the wife, the articles will not bind it, as it never could become the property of the husband, see *Simson v. Jones*, *supra*. Though the articles for a settlement are placed under the head "Agreement," it must be remembered that they require the same stamps as an actual settlement.

Parol agree-
 ments sup-
 ported in
 equity.

2. If an agreement intended to be reduced into writing is prevented by fraud from being so done, equity will compel a specific perform-

ance, Prec. Chan. 526. So likewise a parol agreement in part performed, *Taylor v. Beech*, 1 Ves. 227. But the acts which are considered to amount to a part performance must be such as could be done with no other view than to perform the agreement, 1 Foulb. Eq. 187, n. ; 1 Sugd. V. & P. 195, 10th edit. A male infant of the age of twenty years, and a female infant of the age of seventeen years, may, with the approbation of the Court of Chancery, make valid settlements, or contracts for settlements, of their real and personal estates upon marriage, 18 & 19 Vict. c. 43, ss. 1 & 4.

Agreements.

3. Articles being, for the most part, little more than heads or minutes of an agreement, cannot be followed in all respects literally; but if a settlement, in pursuance of articles, depart from their spirit and import, it will be deemed an imperfect execution of the articles, and be rectified in a court of equity, *West v. Erissey*, 2 P. Wms. 353; *Randall v. Willis*, 5 Ves. 273. Wherever, therefore, it appears from the marriage articles that a strict settlement was intended, although it be not expressed in positive terms, a court of equity will execute the articles in strict settlement, *Trevor v. Trevor*, 1 P. Wms. 622.

Settlement according to the articles.

4. Where, in articles for a settlement, there is no express declaration that the usual powers of sale should be inserted, such a power, it seems, cannot be inserted, *Wheate v. Hall*, 17 Ves. 80; Sugd. Pow. 178, 6th edit. But where marriage articles contained a clause for all usual powers, it has been decided, that powers of sale and exchange come within this clause, and ought to be inserted in the settlement, *Peake v. Penlington*, 2 Ves. & B. 311. (As to settlements, see further SETTLEMENTS.)

What can or cannot be added to the articles.

No. LXX.

Articles for a Settlement of the Freehold, Copyhold and Personal Property of the intended Wife, an Infant.

No. LXX.
Marriage Articles.

This Indenture made the day of in the year of the reign of &c. and in the year of our Lord 18 *Between* (*Intended Wife*) spinster &c. of the first part (*Guardian* or *Father*) of &c. of the second part (*Intended Husband*) of &c. of the third part and (*Trustees*) of the fourth part *Whereas* a marriage is intended to be shortly had and solemnized between the said (*I. H.*) and said (*I. W.*) *And whereas* the said (*I. W.*) will attain her age of twenty-one years the day of next ensuing *And whereas* by the last will and testament of *W. C.* late of &c. deceased bearing date on or about &c. and

Parties.

Recital of agreement for the marriage.

Lady will attain her age, &c.;

No. LXX.

*Marriage
Articles.*is seised of free-
hold estates,
&c. under a
will.Agreement that
the lady's pro-
perty shall be
settled.

Testatum.

Husband and
wife to concur,in conveying
real estates,upon trust for
sale.

several codicils thereto &c. the said (*I. W.*) is seised of or entitled to divers freehold and copyhold estates and is possessed of or entitled to a share of personal estate to a considerable amount and eventually may become seised or possessed of or entitled to other freehold copyhold and personal estates under and by virtue of the same last will and codicils thereto *And whereas* on the treaty for the said marriage it was agreed by and between the said (*I. W.*) and (*I. H.*) with the approbation of the said (*Guardian*) testified by his signing and sealing these presents that the said freehold copyhold and personal estates or the share or respective shares of the said personal estate of which the said (*I. W.*) is or of which she or the said (*I. H.*) in her right from time to time shall be or become seised of or entitled to under or by virtue of the said will and codicils as aforesaid shall be settled upon the trusts and for the ends intents and purposes and under and subject to the powers provisoes declarations and agreements hereinafter directed and agreed to be limited expressed and declared of and concerning the same *Now this Indenture witnesseth* That in consideration of the said intended marriage he the said (*I. H.*) doth hereby for himself his heirs executors and administrators *And* the said (*I. W.*) with the consent and approbation of the said (*Guardian*) testified by his executing these presents doth hereby so far as she can or may at law or in equity for herself her heirs executors and administrators covenant with the said (*T.*) their executors and administrators That in case the said intended marriage shall take effect and the said (*I. W.*) shall live to attain the age of twenty-one years of age They the said (*I. H.*) and (*I. W.*) and all other necessary parties shall and will at the costs and charges of him the said (*I. H.*) as soon as conveniently may be after the said (*I. W.*) shall have attained her said age of twenty-one years by such ways and means as by the counsel of the said (*T.*) or the survivor of them or the executors or administrators of such survivor shall be advised or required effectually convey surrender and assure or cause and procure to be conveyed surrendered and assured the said freehold and copyhold hereditaments to which the said (*I. W.*) now is or at any time hereafter may become entitled under the said will and codicils unto and to the use of the said (*T.*) their heirs and assigns upon the trusts and for the intents and purposes and with under and subject to the powers and provisions hereinafter mentioned (that is to say) *Upon trust* that they the said (*T.*) and the survivor of them and the heirs and assigns of such

survivor do and shall at any time or times with the consent in writing of the said (*I. H.*) and (*I. W.*) his intended wife during their joint lives and after the decease of either of them then with the consent in writing of the survivor of them and after the decease of the survivor of them at the discretion of the said trustees or trustee for the time being absolutely sell and dispose of the said hereditaments and premises hereinbefore agreed to be conveyed and surrendered respectively either entirely and altogether or in parcels by public auction or private contract with full power upon any such sale to make any stipulations as to title or evidence of title or otherwise as the said trustees or trustee shall deem proper and also with power to buy in or rescind any contract for sale of the said premises or any part thereof and to resell the same without being responsible for any loss which may be occasioned thereby with a provision that the receipt or receipts in writing of the trustees or trustee for the time being for the purchase-money of the premises sold shall be an effectual discharge or effectual discharges to the purchaser or purchasers for the money therein respectively acknowledged to be received and that such purchaser or purchasers shall not be concerned to see to the application of his or their purchase-money or be answerable for the loss misapplication or non-application thereof *And* with a power to enable the trustees or trustee for the time being at any time or times during the lives of the said (*I. H.*) and (*I. W.*) and the life of the survivor of them with their his or her consent in writing and after the decease of such survivor at the discretion of the said trustees or trustee for the time being and in the mean time and until the said hereditaments and premises shall be sold in pursuance of the trusts aforesaid to make and execute any lease or leases of the same premises or any of them or any part thereof for any term not exceeding twenty-one years to take effect in possession at the best yearly rent or rents which can be reasonably obtained without any fine or other benefit in the nature of a fine provided that every such lease be not made without impeachment of waste and do contain a covenant for the payment of the rent and such other usual and proper covenants as the said trustees or trustee shall think proper and also a condition of re-entry on non-payment for a period not less than twenty-eight days of the rent thereby reserved and on non-observance of any of the covenants or conditions therein contained and provided a counterpart of every deed of lease be executed

No. LXX.

*Marriage
Articles.*

Trustees' receipts.

Power to lease.

No. LXX.

*Marriage
Articles.*Application of
rents until sale.Trusts of
monies arising
from sale.Further tes-
tatum.Covenant as to
personal estate.Trust to con-
vert personality
into money.

by the lessee *And* with a declaration that until the said here-
ditaments and premises shall be so sold as aforesaid the said
trustees or trustee shall and do pay and apply the rents issues
and profits of the same premises or the unsold part or parts
thereof respectively in the manner in which the interest of the
money to be produced by such sale would for the time being
be applicable under the trusts hereinafter contained in case
such sale were then actually made *And* it is hereby further
agreed and declared that the said trustees or trustee shall hold
the monies which shall arise from any sale made in pursuance
of the aforesaid trusts upon trust in the first place by with
and out of the same monies to reimburse themselves or him-
self or pay or discharge all the costs and expenses incurred
in or about such sale or otherwise in respect of the premises
and in the next place to apply such monies upon the same
trusts as are hereinafter declared concerning the monies to be
received in respect of the personal estate of the said (*I. W.*)
And this Indenture further witnesseth That in pursuance of the
said agreement in this behalf and in consideration of the said
intended marriage the said (*I. H.*) doth hereby for himself his
heirs executors and administrators and the said (*I. W.*) with
such consent and approbation and so testified as aforesaid doth
hereby so far as she can or may at law or in equity for herself
her heirs executors and administrators covenant with the said
(*T.*) their executors administrators and assigns that in case the
said intended marriage shall take effect They the said (*I. H.*)
and (*I. W.*) or their respective executors or administrators shall
and will at the costs and charges of the said (*I. H.*) his exe-
cutors or administrators from time to time as soon as the case
will admit make do and execute or cause to be made done and
executed all such assignments acts deeds matters and things
whatsoever as will effectually vest all such personal estate what-
soever as the said (*I. W.*) is now in anywise entitled to or as she
the said (*I. W.*) or the said (*I. H.*) in her right shall at any
time or times during the joint lives of them the said (*I. H.*) and
(*I. W.*) become in anywise entitled to under the said recited will
and codicils respectively and every part thereof respectively in
the said (*T.*) or the survivor of them or the executors adminis-
trators or assigns of such survivor upon the trusts and with the
powers hereinafter declared of and concerning the same (that is
to say) *Upon trust* from time to time when and as such per-
sonal estate shall fall into possession or become payable or

transferable to or receivable by the said trustees or trustee for the time being to call in and receive sell and dispose of and convert into money the same personal estate and every part thereof and to lay out and invest the money arising therefrom and also the monies to arise from the sale of the said freehold and copyhold estates hereinbefore agreed to be conveyed as aforesaid in the names or name of the said trustees or trustee for the time being either in the public funds or parliamentary stocks of Great Britain or at interest upon government or real securities in England but not in Ireland and to alter vary and transpose the same stocks funds or securities from time to time as to them or him shall seem reasonable yet so that during the lives of the said (*I. H.*) and (*I. W.*) and the life of the survivor of them every such alteration variation and transposition shall be made with their his or her consent in writing *And upon trust* to pay the interest dividends and annual proceeds of all the said trust monies stocks funds or securities to or permit the same to be received by the said (*I. H.*) and his assigns during his life *And* after his decease to or by the said (*I. W.*) and her assigns during her life *And* after the decease of the survivor of them the said (*I. H.*) and (*I. W.*) to stand possessed of all the said trust monies stocks funds and securities and the interest dividends and annual produce thereof *In trust* for all and every or such one or more exclusively of the others or other of the children and child of the said intended marriage at such age day or time or respective ages days or times *And* if more than one in such shares and proportions and with such provisions for their respective maintenance and education or advancement and with such annual sums of money and limitations over for the benefit of the said children or some or one of them and upon such conditions with such restrictions and in such manner as the said (*I. H.*) and (*I. W.*) his intended wife shall during their joint lives by any deed or deeds instrument or instruments in writing with or without power of revocation and new appointment to be by them both sealed and delivered in the presence of and attested by two or more credible witnesses jointly direct or appoint *And* in default of such joint direction or appointment and so far as every or any such direction or appointment shall not extend then as the survivor of them the said (*I. H.*) and (*I. W.*) his intended wife by any deed or deeds instrument or instruments in writing with or without power of revocation or new appointment to be by him or her sealed and delivered in the

No. LXX.

*Marriage
Articles.*

To invest proceeds of sales.

Interest payable to husband for life,

remainder to wife for life.

Trusts for children as husband and wife shall appoint,

or as survivor shall appoint.

No. LXX. <i>Marriage Articles.</i>	presence of and attested by two or more credible witnesses or by his or her last will and testament or any codicil or codicils in writing to be by him or her signed in the presence of two or
In default of appointment for children equally.	more credible witnesses shall from time to time direct or appoint and in default of any such direction or appointment or so far as any such direction or appointment shall not extend in
Hotchpot clause.	trust for all and every the children and child of the said intended marriage who being a son or sons shall attain the age of twenty-one years or who being a daughter or daughters shall attain that age or marry to be divided between or among such children If more than one in equal shares and if there shall be but one
Maintenance.	such child the whole to be in trust for that one child But no child taking any share or shares of the said trust monies stocks funds and securities under any appointment or appointments to be made by the said (<i>I. H.</i>) and (<i>I. W.</i>) or the survivor of them under the aforesaid powers in that behalf or either of them shall be entitled to any share of the unappointed part of the said trust monies stocks funds and securities without bringing his or her appointed share or shares into hotchpot and accounting for the same accordingly <i>And upon further trust</i> after the death of the said survivor of them the said (<i>I. H.</i>) and (<i>I. W.</i>) and until the vesting of the portions of the children of the said intended marriage under the trust aforesaid to pay and apply all or any part of the interest dividends or annual produce of the portion or portions to which any such child or children shall or may for the time being be entitled in expectancy for or towards his her or their maintenance and education respectively and to accumulate the residue thereof in the public stocks or funds or upon such securities as aforesaid for the benefit of the person or persons who shall ultimately become entitled to the principal and
Advancement.	with power for the said trustees or trustee for the time being at any time or times after the decease of the survivor of them the said (<i>I. H.</i>) and (<i>I. W.</i>) or in the lifetime of them or either of them in case they he or she shall so direct by any writing or writings under their his or her hands or hand to levy and raise any part or parts of the then expectant or then vested portion or portions of any child or children of the said intended marriage under the trusts aforesaid not exceeding in the whole for any one such child one moiety or equal half part or share of his or her then expectant or then vested portion and to pay and apply the same for his her or their preferment advancement or benefit in such manner as the said trustees or trustee shall in their or his discretion think fit <i>And upon further trust</i> that if there

shall be no child of the said intended marriage who being a son shall attain the age of twenty-one years or being a daughter shall attain that age or marry then and in such case the said (T.) and the survivor of them and the executors administrators and assigns of such survivor shall from and after the decease of the said (I. H.) and such default or failure of children of the said intended marriage as aforesaid stand and be possessed of and interested in all and singular the said trust monies stocks funds and securities and the dividends interest and annual produce thereof and all the accumulations of the same if any or such part thereof respectively as shall not have been applied or disposed of under any of the trusts powers or authorities aforesaid upon the trusts following (that is to say) If the said (I. W.) shall survive the said (I. H.) in trust for her the said (I. W.) her executors administrators and assigns But if the said (I. W.) shall die in the lifetime of the said (I. H.) then in trust for such person or persons and for such intents and purposes as the said (I. W.) in her lifetime notwithstanding her coverture shall by her last will and testament in writing or any codicil or codicils thereto or any writing or writings purporting to be a will or codicil to be signed by her in the presence of and attested by two or more credible witnesses direct or appoint And in default of such direction or appointment in trust for the person or persons who by virtue of the statute of distribution of intestates' effects would at the decease of the said (I. W.) have become entitled to her personal estate if she had died intestate unmarried and without issue and such persons if more than one to take in the shares in which they would have become entitled to such personal estate And it is hereby agreed and declared that in any conveyances settlement or settlements of any real or personal estate which may be made in pursuance of these presents there shall be inserted the usual power for trustees to give receipts and all other proper clauses declarations and agreements for enabling the several trustees to be therein named to execute and perform the several trusts to be in them reposed And also a power or proviso for the appointment of any new trustee or trustees by the said (I. H.) and (I. W.) or the survivor of them or the executors or administrators of such survivor either in addition to the acting trustees or trustee for the time being or in the place or stead of any trustee or trustees for the time being under such settlement who shall die or desire to be discharged from or decline or become incapable to act in the

No. LXX.

*Marriage
Articles.*

Trusts in favor
of wife, if no
children.

Clauses to be
inserted in set-
tlements.

No. LXX.

*Marriage
Articles.*

aforesaid trusts *And* also proper clauses agreements and declarations for the indemnity of the said trustees and for authorizing and empowering them to deduct and retain the costs and expenses to be incurred by them in or about the execution of any of the aforesaid trusts or powers *And* also such further and other clauses provisions powers agreements and declarations as well for the further explaining these presents as for the convenience use or benefit of all or any of the parties to such settlement or of any person or persons interested in the premises as the said (*T.*) or the survivor of them or the executors or administrators of such survivor shall think proper and reasonable or as usual in such cases *In witness &c.*



No. LXXI.

*Equitable
Mortgage.*

No. LXXI.

Agreement that a Person shall hold Title Deeds as a Deposit and for a Mortgage at some future time.

Obs. 1. It is a rule in equity, grounded on the decision of Lord Thurlow, in *Russell v. Russell*, 1 B. C. C. 269, that a mere deposit amounts to an equitable mortgage; but as the question respecting the intention of the parties has been frequently raised, a writing is absolutely necessary, in order to prevent litigation. See Shelford on Bankruptcy, pp. 291—294, 2nd. edit.

2. A mere agreement to mortgage, where there is no deposit of title deeds, will not in equity defeat the legal claims of other parties, *Finch v. Winchelsea (E.)*, 1 P. Wms., and ought not therefore to be substituted in any case for a regular mortgage.

Articles &c. Between (*Borrower*) of &c. of the one part and (*Lender*) of &c. of the other part *Witness* That in consideration of the said (*L.*) having on or about the day of instant transferred into the name of the said (*B.*) the sum of £ 3 per cent. Consolidated Bank Annuities the property of the said (*L.*) for the accommodation of the said (*B.*) and by way of loan to him the said (*B.*) the said (*B.*) *Hath* deposited and by these presents *Doth* declare that he hath deposited with the said (*L.*) and in his hands put the several deeds and papers mentioned or enumerated in the schedule to these presents being deeds and papers which relate to or concern the title of *all* that piece or parcel of ground messuage &c. (*parcels*) with the rights members and appurtenances *To the intent* that the same deeds and the same piece or parcel of ground messuage &c. and the fee-simple and inheritance thereof may be a security to the said (*L.*)

his executors administrators and assigns for the transfer by the said (*B.*) and his executors or administrators of the sum of £ 3 per cent. Consolidated Bank Annuities and for the payment in the meantime by the said (*B.*) his heirs executors administrators and assigns to the said (*L.*) his executors &c. of the dividends which would have become payable on or for the said sum of £ 3 per cent. &c. if the same had not been so transferred as aforesaid *And* the said (*B.*) doth hereby agree on or before the day of next ensuing to purchase or cause to be purchased the sum of £ 3 per cent. Consolidated Bank Annuities and to transfer the same into the name of the said (*L.*) and to pay the amount of the intermediate dividends thereon to the said (*L.*) his executors &c. without any abatement or deduction whatsoever *And* moreover if the said sum of £ 3 per cent. &c. and amount of dividends should remain on this security at any time after the day of next ensuing then he the said (*B.*) his heirs executors or administrators shall and will at any time thereafter at his and their own costs and charges upon the request of the said (*L.*) his executors &c. by such conveyances assignments and assurances as he or they or his or their counsel shall in that behalf advise well and effectually convey the said piece or parcel of ground messuage &c. with their and every of their appurtenances unto the said (*L.*) his heirs executors &c. free from all incumbrances subject nevertheless to a proviso for redemption thereof to be contained in such conveyances together with all such other covenants clauses and stipulations as are usual in mortgages of a like kind *In witness* &c.

No. LXXI.

*Equitable
Mortgage.*

No. LXXII.

Agreement for a Mortgage with a Deposit of Title Deeds.

Memorandum of an agreement made &c. Between (*Mortgagor*) of &c. of one part and (*Mortgagee*) of &c. of the other part *Whereas* the said (*mortgagor*) stands justly and truly indebted to the said (*mortgagee*) in the sum of £ and for securing the repayment thereof with interest after the rate of £ per cent. per annum hath this day deposited in his hands the title deeds and writings relating to a freehold estate at in the county of specified in the schedule hereunder written or hereunto annexed *Now* therefore the said (*mort-*

No. LXXII.

*Equitable
Mortgage.*

No. LXXII. *Equitable Mortgage.* *gagor*) doth hereby agree with the said (*mortgagee*) that if the said sum of £ with interest thereon after the rate aforesaid shall not be paid to the said (*mortgagee*) his executors administrators or assigns on or before the day of next ensuing the date hereof that then and in such case the said (*mortgagor*) and all other necessary parties (if any) shall and will immediately afterwards at the request of the said (*mortgagee*) his executors administrators or assigns but at the proper costs and charges of the said (*mortgagor*) his executors or administrators well and effectually convey and assure the said freehold estate free from incumbrances by such assurances as the said (*mortgagee*) his executors administrators or assigns or his or their counsel in the law shall approve unto and to the use of the said (*mortgagee*) his heirs and assigns subject nevertheless to redemption on the repayment of the said sum of £ with interest for the same after the rate aforesaid at the times and in manner to be therein mentioned.

And it is hereby agreed that the said conveyance shall contain the usual covenants for title and for further assurance and all other provisoes declarations and covenants usually inserted in mortgages of the like nature *And* that in the said conveyance shall be inserted a power for the said (*mortgagee*) his executors administrators or assigns in case of default being made in payment of the said sum of £ and interest six months after notice for the payment thereof to sell the whole or any part of the said estate by public auction or private contract subject to any reasonable conditions of sale and to apply the money arising from any such sale or a sufficient part thereof in payment of the expenses incident to such sale and of the principal and interest monies due to the said (*mortgagee*) his executors administrators or assigns by virtue of the said mortgage *And* it is hereby further agreed between the said parties hereto that the said deeds and writings and the estate therein comprised shall not be redeemed or redeemable by the said (*mortgagor*) his heirs or assigns until payment of the said sum of £ together with interest for the same after the rate aforesaid *Witness* our hands the day and year first above written.

The schedule to which the above agreement refers.

AGREEMENTS FOR A PARTITION.

- | | |
|---|--|
| <p>1. <i>Partition by Parol, where formerly good or otherwise.</i></p> <p>2. <i>Effect of a Parol Agreement to hold in Severalty.</i></p> | <p>3. <i>Agreements sometimes necessary.</i></p> <p>4. <i>Stipulations as to Costs.</i></p> <p>5. <i>A Deed now necessary.</i></p> |
|---|--|



SECT. 1. At common law, coparceners might have made partition by parol without deed, Litt. s. 250; also tenants in common might have made partition by parol, if they afterwards executed the partition by livery of seisin. A parol partition between joint-tenants of freeholds was not good, Dyer, 350 b; Co. Litt. 169 a; Cro. Eliz. 95. But joint-tenants as well as tenants in common might have made partition of a terms of years without deed, Dyer, 350 b; Cro. Eliz. 95. The author of the "Commentaries," and after him Mr. Cruise, observe, that "the Statute of Frauds has abolished this distinction, and made a deed necessary in all cases." It was, however, the more general opinion, that a writing only was necessary on partition by coparceners, and a writing executed with livery of seisin by tenants in common, 2 Comm. 324; 4 Cru. Dig. 96, s. 16; *Oakley v. Smith*, Amb. 368; Allnat on Part. 130.

2. An agreement between joint-tenants to hold in severalty will operate in equity to sever the joint-tenancy, so that the *jus accrescendi*, or right of survivorship, is destroyed, 2 Comm. 185; *Brown v. Raindle*, 3 Ves. jun. 256. But it appears that a mere verbal agreement will not be sufficient; there must be some note or writing, 2 B. C. C. 220; 1 Vern. 472; 2 Cru. Dig. 513. So a parol agreement for equality of partition, put in execution and long acquiesced in, if entered into by parties having a right to contract, will be established in equity, *Ireland v. Rittle*, 1 Atk. 542. But a partition under an agreement made by the husbands of two joint-tenants will not bind the inheritance of the wives, unless they be parties thereto, *Ireland v. Rittle*, 1 Atk. 542; 2 Cru. Dig. 513. A parol agreement to make partition by the guardian of an infant tenant in common will be binding, if confirmed by the infant after his coming of age by granting leases or otherwise, *Whaley v. Danson*, 2 Sch. & Lef. 367. Also a parol partition between tenants in tail will be binding on the issue, 2 Vern. 233. Courts of equity may decree a partition of lands of copyhold or customary tenure, 4 & 5 Vict. c. 35, s. 85. Before that act a bill in equity did not lie for the partition of such lands, *Horncastle v. Charlesworth*, 11 Sim. 315; *Jope v. Morshead*, 6 Beav. 213; *Oakley v. Smith*, Amb. 368; *S. C. Eden*, 261. A partition by parol and separate possession cannot be questioned after having been acted on for more than twenty years, *Paine v. Ryder*, 24 Beav. 151.

Partition.

Effect of a parol agreement to hold in severalty.

Agreements sometimes necessary.

3. Although joint-tenants and tenants in common are compellable,

- Partition.* by the 31 Hen. 8, c. 1, and 32 Hen. 8, c. 32, to make partition, yet this will not obviate the necessity for an agreement, particularly where delay is likely to arise in executing the partition.
- Stipulations as to costs. 4. It was formerly held, that, in the absence of all stipulation, the expense was to be borne equally by all parties, however unequal their interest, *Norris v. Le Neve*, 3 Atk. 81; *Cornish v. Gest*, 2 Cox's Cas. 27. This doctrine appears, however, to have been since overruled, *Calmady v. Calmady*, 2 Ves. jun. 568; an express provision on this point ought therefore to be inserted in the agreement.
5. By the 8 & 9 Vict. c. 106, s. 3, partitions of any tenements or hereditaments, not being copyhold, made after the 1st day of October, 1845, are void at law, unless made by deed.

No. LXXIII.

No. LXXIII.

Partition
(*Joint Tenants*).

Agreement between two Joint Tenants of Freeholds or Copyholds to make Partition.

- Parties. *Articles &c.* Between A. B. of &c. of the one part and C. D. of &c. of the other part *Whereas* under or by virtue of the last will &c. (*or as the case may be*) the said A. B. and C. D. are seised to them and their heirs in equal shares and proportions as joint-tenants in possession of certain messuages lands and hereditaments situate at &c. *And whereas* the said A. B. and C. D. are desirous of making such partition thereof as is hereinafter particularly expressed *Now these presents witness* and each of them the said A. B. and C. D. doth for himself respectively and for his respective heirs executors and administrators agree with the other of them his heirs &c. in manner following that is to say (a) That the messuages &c. situate at &c. shall henceforth become the sole property of the said A. B. his heirs and assigns and the &c. of the said C. D. &c. *And* that it shall be referred to (*Arbitrator*) of &c. to settle the equivalent in money or otherwise by
- Recital of seisin.
- Agreement to make partition.
- Testatum.
- Part of the premises to belong to the one, and part to the other.
- Partition made by commissioners or their umpire. (a) If the partition is to be made by commissioners, instead of this and the subsequent clause, say "That a partition and division of all and singular the said messuages lands and hereditaments into two separate allotments as nearly as may be shall be made by (*one commissioner*) of &c. a commissioner nominated by and on behalf of the said A. B. and (*other commissioner*) of &c. a commissioner nominated by and on behalf of the said C. D. or by the umpire to be chosen by them *And* that the said (*C.*) or their umpire shall apportion each of the allotments in severalty to the said A. B. and C. D. and decide what sum of money shall be paid for equality of partition &c. *And also* that each of them the said A. B. and C. D. shall and will join" &c. (*See above.*)

way of compensation for equality of partition and to decide to which of the said parties the title deeds relating to the said hereditaments shall be delivered *And* that the said parties will stand and abide by the judgment of the said (A.) *And also* that each of them the said A. B. and C. D. shall and will join and concur in making and doing all such acts deeds conveyances and assurances as the other of them his heirs or assigns or his or their counsel shall think necessary for parting and severing the several messuages lands and hereditaments so devised to them the said A. B. and C. D. and for conveying the said messuages lands and hereditaments situate at &c. in severalty unto the said A. B. his heirs and assigns and the several messuages lands and hereditaments situate at &c. in severalty unto the said C. D. his heirs and assigns and that the party to whom the said title deeds shall be delivered shall enter into the usual covenant with the other party for the production of the said title deeds and for furnishing attested or other copies of the same deeds at the expense of the party requiring the same *And lastly* that the costs (a) and expenses of the said conveyances and assurances shall be borne and paid by the person or persons in whose favour the same shall be made and executed and that all other costs and expenses attending the said partition shall be borne equally between the said parties *In witness &c.*

No. LXXIII.
Partition
(Joint Tenants).

Parties to execute mutual conveyances.

Costs.

No. LXXIV.

Agreement for Partition to be made by Commissioners.

And whereas the said A. and B. have mutually agreed to effectuate a partition of the said messuages lands and hereditaments upon the terms and in the manner hereinafter mentioned *Now these presents witness* that the said A. doth hereby agree with the said B. and the said B. doth hereby agree with the said A. in manner following that is to say That a partition and division of all and singular the said messuages lands and hereditaments into two separate allotments of equal value or as nearly so as circumstances will permit shall be made as soon as conveniently may be by (commissioner) of &c. a commissioner nominated by and on the behalf of the said A. and (another commissioner) of &c. a commissioner nominated by and on the behalf

No. LXXIV.
Partition.

Witness that partition shall be made by commissioners,

(a) As to the costs, see sect. 4.

No. LXXIV. of the said B. *And* that if the said commissioners should differ in opinion touching the said intended partition or the mode of carrying the same into effect or touching any matter relating thereto then and in every such case the subject-matter of every such difference of opinion shall be reduced into writing and shall be referred to an umpire to be named by the said commissioners before they proceed on the said arbitration or the valuation or arrangement for that purpose *And* that the determination or decision of such umpire upon the matter or matters so to be referred to him shall be final binding and conclusive both upon the said commissioners and upon the parties hereto *And* that when and so soon as such partition or division shall have been made the said commissioners or in the case of their difference the said umpire shall decide which of the said allotments shall be taken in severalty by the said A. and which of the said allotments shall be taken in severalty by the said B. *And* that it shall be lawful for the said commissioners or in case of their difference the said umpire to decide and determine whether any and what sum of money shall be paid for equality of partition and by which of the parties such money shall be paid *And* that when it shall have been determined which of the said allotments shall be taken in severalty by the said A. and which of the said allotments shall be taken in severalty by the said B. and whether any and what sum of money shall be paid for equality of partition and by which of the said parties such money shall be paid the said parties respectively and their respective heirs or assigns shall with all convenient speed make do and execute all such acts deeds or assurances as the counsel of the said parties respectively or their respective heirs or assigns shall advise or require for the purpose of conveying and assuring such of the said allotments as shall have been decided in manner aforesaid to be taken in severalty by the said A. with their appurtenances unto and to the use of the said A. his heirs and assigns or to such uses and in such manner as he or they shall direct or appoint and for the purpose of conveying and assuring such of the said allotments as shall have been decided in manner aforesaid to be taken in severalty by the said B. with their appurtenances unto and to the use of the said B. his heirs and assigns or to such uses and in such manner as he or they shall direct or appoint [*And* that such provisions shall be made for the payment by the respective parties of their shares of the monies due or to become due on the said mortgages respectively as by the said

Partition.
and if they disagree,

the decision of their umpire to be final.

Commissioners or umpire to decide what allotment each party shall have;
and the equality of partition money.

Parties to execute mutual conveyances.

Commissioners or umpire to decide who shall pay mortgage money.

commissioners or their umpire shall in that behalf be directed] *No. LXXIV.*
And it is hereby further agreed that the said commissioners *Partition.*
shall be and they are hereby authorized to make a survey of the Commissioners
said estates and to cause a map or plan to be drawn thereof authorized to
and that the costs charges and expenses of preparing engrossing make a survey.
and executing this present agreement or in anywise relating All costs of
thereto and of making such partition or division as aforesaid partition to be
and of making such survey and such map as aforesaid and all borne equally.
other costs charges and expenses incurred or to be incurred in
or about such partition or division or in anywise relating thereto
[except the costs charges and expenses of the respective con-
veyances of the allotments to be taken in severalty] shall be paid
and borne by the said A. and B. in equal proportions *And* that
the expense of the conveyances of the allotments to be taken in
severalty by the said A. shall be borne by the said A. *And* that
the expense of the conveyances of the allotments to be taken in
severalty by the said B. shall be borne by him *And* it is
hereby further agreed and declared that the said commissioners
or their umpire shall decide to which of the said parties the
custody of the several title deeds relating to the said heredita-
ments shall respectively belong and by whom and in what pro-
portions the expenses of any attested copies or covenants for
production of deeds which may be necessary shall be borne
[or “*That* if either of the parties to the said intended partition
should require an attested copy or attested copies of any of
the title deeds or title deed in the custody of the other party
to the said partition or to have a deed of covenant for the pro-
duction of any such title deed or title deeds then and in such
case the expense of making such attested copy or copies and the
expenses attending the framing engrossing and executing such
deed of covenant shall be paid by the party requiring the same”]
And for the due execution and observance of the agreements
hereinbefore contained on the part of the said A. and B. the said
A. and B. *do hereby* bind themselves their heirs executors and
administrators the one to the other of them in the sum of
pounds *In witness &c.*

Each party to
pay costs of his
own convey-
ance.

Commissioner
or umpire to
decide who
shall have the
title deeds.

Expenses of
attested copies,
&c. to be paid
by the requir-
ing party.

Nomine pæne.

The schedule to which the above agreement refers.



No. LXXV.

No. LXXV.

*Partition
(Severalty).*Recital of co-
partnership.That the par-
ties have made
a division.

Testatum.

I. D. covenants
to convey and
assure to C. D.
his share ;*Agreement between two Joint-Tenants to hold in severalty.*

Articles &c. Between I. D. of &c. of the one part and C. D. of &c. of the other part *Whereas* the said I. D. and C. D. have for many years exercised and carried on in copartnership the trade of and as such partners have at different times purchased and acquired the several freehold and leasehold estates mentioned or referred to in the schedules hereunder written or hereunto annexed marked with the letters A. and B. and the same have been purchased and acquired by and out of the capital or stock in trade on account of the said copartnership or joint trade and they are beneficially entitled to the same estates in equal shares and proportions *And whereas* the said partners are desirous of making an equal division of the said freehold and leasehold premises between themselves and for that purpose have proceeded to make a valuation thereof and having fully considered the nature and tenure of the different estates comprised in the said two schedules and the value thereof have mutually agreed that the estates mentioned and referred to in the said schedule marked with the letter A. shall from the day of now next ensuing be considered as the sole and exclusive estate and property of and shall henceforth be held in severalty by the said I. D. and that the estates mentioned in the said schedule marked with the letter B. shall be considered as the sole and exclusive estate and property of and shall henceforth be held in severalty by the said C. D. *Now these presents witness* That in pursuance of the said agreement and for giving effect to the same and in consideration of the agreement hereinafter contained on the part of the said C. D. he the said I. D. doth hereby for himself his heirs executors and administrators agree with the said C. D. his heirs executors and administrators in manner following that is to say That he the said I. D. and every person claiming and to claim by from through or under him shall and will from time to time and at all times hereafter at the reasonable request and at the costs and charges of the said C. D. his heirs executors or administrators make and execute or join in making and executing all such acts matters and things assignments conveyances and assurances in the law as shall be requisite and necessary for assigning conveying and assuring the several freehold and leasehold hereditaments referred to in the schedule marked with the letter B. and all the estate right title and interest of him the said I. D.

into and out of the same unto and to the use of the said C. D. his heirs executors and assigns according to the respective nature and tenure thereof as he or they shall direct or appoint *And further* That in the meantime and until such conveyances assignments and assurances shall be made or executed as aforesaid it shall be lawful for the said C. D. his heirs executors administrators and assigns from time to time and at all times hereafter according to the respective tenures thereof peaceably and quietly to have hold occupy possess and enjoy the several freehold and leasehold estates specified in the said schedule B. and to receive and take the rents issues and profits thereof from the day of 18 for his and their own exclusive use and benefit without any let hindrance or interruption of from or by the said I. D. his heirs executors administrators and assigns or any other person or persons claiming or to claim by from through or under him them or any of them *And these presents further witness* That in consideration of the agreement hereinbefore contained on the part of the said I. D. he the said C. D. doth hereby for himself &c. agree with the said I. D. &c. in manner &c. that he the said C. D. and every person &c. at the reasonable request and at the costs and charges of the said I. D. &c. make and execute &c. for conveying assigning and assuring the several freehold and leasehold hereditaments mentioned and referred to in the said schedule A. and all the estate &c. of him the said C. D. into &c. unto and to the use of the said I. D. &c. *And further* &c. it shall be lawful for the said I. D. &c. without any let &c. of or from the said C. D. &c. *In witness* &c.

No. LXXV.
Partition
(Severalty).

and in the
meantime for
quiet enjoy-
ment.

Further testa-
tum;

C. D. cove-
nants to con-
vey to I. D.

No. LXXVI.

Agreement between Parties entitled under a Will to make equal Distribution.

No. LXXVI.
Partition
(Distribution).

Obs. Agreements of this kind, whether made in the lifetime of the testator or after his death, are binding on the parties, and will be supported in equity, unless the devisee is restrained by the terms of the will from alienating the estate devised to him, *Wethered v. Wethered*, 2 Sim. 182; recognizing *Beckley v. Newland*, 2 P. Wms. 182; *Hobson v. Trevor*, ib. 291; *Harnwood v. Tooke*, 1 Madd. Chan. Pract. cited 2 Sim. 192.

This Indenture made the day of 18 between A. B. of &c. of the first part C. D. of &c. of the second part

No. LXXVI.	E. F. of &c. of the third part G. H. of &c. of the fourth part
<u>Partition (Distribution).</u>	and I. K. of &c. of the fifth part <i>Whereas (a) (Testator)</i> by his last will and testament duly made and executed and bearing date
Recital of will.	day of <i>Did</i> give and bequeath all and singular his goods chattels debts monies and all other the personal estate and effects of him the said (<i>T.</i>) unto the said (<i>Parties</i>) in the several shares and proportions therein mentioned <i>And whereas</i> doubts have arisen as to the intentions of the said (<i>T.</i>) as expressed in the said will, and the said (<i>P.</i>) parties hereto are desirous of preventing all differences and questions which might arise in regard thereto <i>Now this Indenture witnesseth</i> and it is hereby declared and agreed by and between the parties to these presents that all and singular the goods chattels debts monies and all other the personal estate and effects of the said (<i>T.</i>) shall be divided between them respectively and their respective (<i>b</i>) executors and administrators in equal shares and proportions share and share alike notwithstanding the said will or other testamentary writing of him the said (<i>T.</i>) bequeathing the same to them in a different manner [<i>or</i> “as if the said (<i>T.</i>) had died intestate”] (<i>c</i>) <i>And further</i> each of them the said (<i>P.</i>) severally for himself and herself and his and her respective heirs executors administrators and assigns and for and concerning only the acts deeds and defaults of himself and herself respectively and his or her respective [heirs] executors &c. doth hereby covenant and agree with each of the others of them severally and his or her [heirs] executors &c. that they the said &c. respectively and their respective [heirs] executors &c. shall and will from time to time (<i>d</i>) when and as often as they respec-
Testatum.	
Agreement for division.	
Covenant for further assurances.	

(a) If the agreement be made in the lifetime of the testator recite “Whereas (*testator*) stands seised and possessed of divers freehold and copyhold estates and also a considerable personal estate which the said (*parties*) expect to be given devised or bequeathed to them and in case he die intestate then the said (*parties*) or one of them by descent by the Statute of Distribution or by surrender or the custom of the manor or by some other ways or means would become entitled to such freehold and copyhold estates and the personal estate as aforesaid.”

(b) If there be any real estate say “heirs executors &c.”

(c) If it be so agreed in the life-time of the testator say, “*And further* that all property which shall be given at any time or times hereafter to any or either of them the said (*parties*) shall for all the purposes of this agreement be deemed to be the property of the said (*testator*) to be so divided as aforesaid and the same or the value thereof shall be brought into hotelpot and accounted for according to this agreement.”

(d) If the agreement be made in the lifetime of the testator say, “After

tively shall be thereunto required by any other or others of them his her or their [heirs] executors &c. and without any recompence or consideration for the same but at the costs and charges of the person by whom such request shall be made do and execute all such acts deeds and assignments in the law whatsoever for effectuating the said agreement and more fully and completely confirming the same as their respective counsel shall reasonably advise or require *In witness &c.*

No. LXXVI.
Partition
(*Distribution.*)

AGREEMENTS BETWEEN PRINCIPAL AND AGENT.

- | | |
|---|---|
| <p>1. <i>Agent when authorized by Writing, and when not.</i>
<i>When by Deed or otherwise.</i></p> <p>2. <i>Agent must act in the Name of Principal.</i></p> <p>3. <i>Principal bound by Acts of Agent.</i></p> <p>4. <i>Agent not to exceed his Authority.</i></p> <p>5. <i>Agent not answerable for Losses.</i></p> | <p>6. <i>Credit when to be given by Agent.</i></p> <p>7. <i>Agent cannot bind Principal for his own Debt.</i></p> <p>8. <i>Duration of Contract.</i></p> <p>9. <i>Compound Interest allowed to Agents.</i></p> <p>10. <i>Agents not Partners.</i></p> |
|---|---|

SECT. 1. By the Statute of Frauds, 29 Car. 2, c. 3, ss. 1, 3, relating to leases, &c., an agent must be authorized by writing to sign any agreement, but by the fourth section an agent may be authorized by parol to treat for or buy any estate, *Coles v. Trecothick*, 9 Ves. 234, 250; and by the seventeenth section he may be authorized in the same manner for the sale of goods. But in every case, as well of special as general agencies, it is highly expedient that the limits and extent of the agent's authority should be defined by some writing, *Mortlock v. Buller*, 10 Ves. 310; *Daniel v. Adams*, Ambl. 495. Formerly, every delegation of authority must be by deed, Co. Litt. 48 b; 1 Salk. 96; but since the statute, agreements in writing, though not sealed, are said to have had some better countenance, *Wheeler v. Newton*, Prec. Cha. 16; but a power to make or to take livery of seisin, or to do any matter which concerns the freehold, must be by deed, Co. Litt. 48 b; *Striglitz v. Eggington*, 1 Holt, 141. So an authority to execute a deed, *Harrison v. Jackson*, 7 T. R. 209.

Agent when authorized by writing and when not.

When by deed or otherwise.

2. Generally speaking, an agent or attorney, who has authority to do an act, must do it in the name of his principal: thus the execution

Agent must act in name of principal.

the decease of the said (*testator*).'' An agreement of this kind cannot be carried into effect until the death of the testator, and therefore a party is not guilty of laches who waits until then, before he asserts his right, *Wethered v. Wethered*, 2 Sim. 182, see *Observation*, p. 133.

Principal and Agent.

Principal bound by the acts of his agent.

and delivery of a deed must be in the name of the principal; if it be the execution of the agent only, it is void as to the principal, *Moor*, 70; but the form of words used in the execution is not material, *Wilks v. Bach*, 2 East, 144 (see further, APPOINTMENT, POWER OF ATTORNEY). In mercantile transactions there is this difference between a broker and a factor, that the latter is authorized to sell in his own name, but the former is not, *Baring v. Corrie*, 2 B. & Ald. 137.

3. The principal is bound by the acts of the agent in every thing which falls within the scope of his authority, *Webster v. Seekamp*, 4 B. & Ald. 352. Care ought therefore to be taken, in the penning such instruments, that they should not give an authority beyond what was in the contemplation of the principal. Thus, when a broker, who is not authorized to sell in his own name, sells without disclosing the name of his principal, he acts beyond the scope of his authority, and his principal is not bound by the contract, *Baring v. Corrie*, 2 B. & Ald. 137.

Agent not to exceed his authority.

4. A factor who is the agent in a foreign country of a merchant residing at home, or *e contra*, is mostly authorized by a letter of attorney, and must pursue his commission strictly.

Agent not answerable for losses.

5. Where power is given to the factor in express words, as is usually done, to dispose of the goods as if they were his own, the acts of the factor will be excused, although they occasion loss to the principal. If the goods which come to his hands receive damage, but not through his negligence, the principal shall bear the loss, 4 Co. 84. So likewise, if the factor be robbed, he shall be discharged in account brought against him by his principal, *ib.*

Credit when to be given by agent.

6. A bare commission to sell is not sufficient power for the factor to give credit, *Brown v. Staton*, 2 Chit. Rep. 353; and by the general power of doing as if it were his own, he may not give credit for an unreasonable time, 2 Cha. Ca. 57.

Agent cannot bind principal for his own debt.

7. By the common law a factor cannot effectually bind the property or the goods of his principal, by pledging them as a security for his own debt, though there is a formality of a bill of parcels and a receipt, *Paterson v. Tash*, Stra. 1178; see Chitty on Contracts, pp. 204—206, 5th ed. By 5 & 6 Vict. c. 39, s. 1, *bonâ fide* advances to persons entrusted with the possession of goods or documents of title, though known to be agents, are protected. So *bonâ fide* deposits in exchange are protected, but no lien shall exceed the value of the goods given up. But the statute only protects transactions *bonâ fide*, without notice that the agent pledging is acting without authority, or *malâ fide* against the owner, 5 & 6 Vict. c. 39, ss. 2, 3. An agent making consignments contrary to the instructions of his principal is guilty of a misdemeanor, if the security be made for a greater sum than is due to the agent, including the amount of any bills of exchange drawn by or on account of the principal and accepted by the agent, 5 & 6 Vict. c. 39, s. 6.

8. An agreement with an agent to manage a concern during his life, for a stipulated salary, gives him a right to the advantages of it, although he be afterwards discharged, *Ball v. Coggs*, 1 B. P. C. 140; but an agent is not to employ himself in the affairs of another during the subsistence of the appointment, *Thompson v. Harclock*, 1 Campb. 527.

Principal and Agent.

Duration of contract.

9. Where an agent advances money for a principal, interest may, contrary to the general rule of law, be computed upon interest, *Bruce v. Hunter*, 3 Campb. 467.

Compound interest allowed to agent.

10. Although, generally speaking, a perception of the profits will constitute a partnership, yet a remuneration made to a traveller, clerk, or agent, out of the sums received by or for his master or principal, does not subject him to the liabilities of a partner, *Benjamin v. Porteus*, 2 H. Bl. 590; *Dry v. Boswell*, 1 Campb. 320; *Cramond v. Cramond*, 4 B. & Ald. 663. See Harrison's Dig. tit. "*Agent and Principal.*"

Agents not partners.

No. LXXVII.

Agreement between a Brewer and a Managing Clerk.

No. LXXVII.

Brewer and Managing Clerk.

Obs. Where such agreement must be in writing, see *supra*, sect. 1. As to stamp, see *ante*, AGREEMENT, 10, p. 80.

Articles &c. Between (*Principal*) of &c. of the one part and (*Clerk*) of &c. of the other part *Witness* That for the considerations hereinafter contained on the part of the said (*P.*) he the said (*C.*) doth hereby agree with the said (*P.*) that he the said (*C.*) shall and will henceforth for and during the term of years (*a*) to be computed from the day of the date of these presents if both of them the said (*P.*) and (*C.*) shall so long live become be and continue the clerk of him the said (*P.*) in his trade or business of a common brewer and shall and will during the term aforesaid give up his whole time and attention to the same in managing conducting superintending and improving the same to the utmost of his power and ability. *And also* shall and will during the said term do and perform all such acts matters or things in about or relating to the said trade or business as he the said (*P.*) shall from time to time direct order or appoint *And* shall not nor will at any time hereafter without the consent in writing of him the said (*P.*) his &c. divulge or make known any trusts secrets or dealings of or relating to the said trade or business of him the said (*P.*) *And also* that

Clerk agrees to serve for a term.

To execute the orders of the principal;

to keep his accounts;

be just and faithful;

(a) As to the duration of the contract, see *ante*, sect. 8.

No. LXXVII. he the said (C.) shall and will during the said term be just and faithful to the said (P.) in all his business dealings and transactions whatsoever *And* shall and will provide and keep so many books of account as shall be necessary wherein he shall fairly write and enter all monies received and paid and all goods in the said trade which shall be bought or received sold or delivered out upon credit or otherwise and the price and prices at which the same shall be bought or sold and all other matters and accounts which shall be necessary to manifest the state of the said trade which said book or books of account shall always remain and be kept in the usual office or place of carrying on the said trade *And these presents further witness* That in consideration of the covenants hereinbefore contained on the part of the said (C.) he the said (P.) doth hereby covenant and agree that he the said (P.) shall and will yearly and every year during the said term of years determinable as herein mentioned well and truly pay unto the said (C.) by half-yearly payments on the day of and the day of the clear yearly sum of £ of &c. without any deduction whatsoever the first half-yearly payment thereof to be made on the day of *And* shall and will always yearly and every year during the said term pay (a) to the said (C.) over and above the yearly sum of £ so much lawful money as will amount or be equivalent to one th part of the clear gains or profits of or arising from the said trade or business so to be carried on by the said (C.) as managing clerk after deducting the said sum of £ and all other debts and dues which shall be paid or payable in respect of the said trade and also all losses and damages which shall happen to the said trade by reason of bad debts or otherwise *And also* in case of the death of either of them the said (P.) and (C.) during the said term shall and will pay unto the said (C.) his executors or administrators a proportional part of the said yearly payments so covenanted to be made to him as aforesaid from the last of such respective days of payment next preceding his decease up to the day of his decease *And finally* it is hereby declared and agreed by and between the parties hereto That it shall be lawful for the said (P.) at any time to determine these presents upon giving unto the said (C.) three months' notice thereof in writing and on the

Brewer and Managing Clerk.

keep books of account.

Principal agrees to pay salary;

and an allowance in proportion to the gains of the trade.

Principal to be at liberty to dismiss clerk.

(a) As to the perception of profits by way of remuneration, see *ante*, sect. 10.

expiration of the said three months and the payment of what shall be due unto the said (C.) every article clause and covenant hereinbefore mentioned shall cease and be void anything herein contained to the contrary in any wise notwithstanding *In witness &c.*

No. LXXVII.
*Brewer and Ma-
naging Clerk.*

No. LXXVIII.

Agreement between a Merchant, or Manufacturer, and a Factor.

No. LXXVIII.
*Merchant and
Factor.*

Articles &c. Between &c. *Witness* That for the considerations &c. the said (*Factor*) for himself &c. doth agree &c. that he the said (*F.*) shall and will during the term of years from the date of these presents accept and take into his charge and trust all such goods wares and merchandizes as he the said (*P.*) shall send and consign to him the said (*F.*) and also shall and will use his best endeavours to sell and dispose of the same to the best profit and advantage *And also* that he the said (*F.*) shall and will keep a true account of all such goods as the said (*P.*) shall from time to time assign to him or that may come into his hands and of all sales barter and other transactions concerning the same and (*a*) shall every months make true payment and delivery unto the said (*P.*) his &c. of all such monies securities and other things as shall be received by the said (*F.*) for the said wares and merchandizes *And* at the expiration or sooner determination of the said term shall and will deliver up unto the said (*P.*) all such goods wares and merchandizes as shall remain unsold in the custody of the said (*F.*) *And also* that the said (*F.*) shall not nor will give credit to any persons or person for a greater length of time than months without the consent in writing of the said (*P.*) *And also* that he the said (*F.*) shall not during the said term deal or trade as a factor for any other person for the buying and selling of any goods wares or merchandize whatsoever [*or* “any wares or goods of a like kind,” *as the case may be*] *And* the said (*P.*) in consideration of the said agency doth hereby agree with

Factor agrees to take charge of goods on sale.

Factor to render accounts at stated times;

to deliver up unsold goods;

not to give credit;

not to carry on any other trade.

Principal agrees to give factor a yearly salary.

(*a*) If the factor be abroad say, “*And* shall immediately remit home to the said (*P.*) all monies bills and other securities received on account of such sales.”

No. LXXVIII. the said (*F.*) that he the said (*P.*) shall and will (*a*) pay unto
 Merchant and the said (*F.*) yearly and every year the sum of £ so long
 Factor. as he shall continue the factor of the said (*P.*) under the present
 agreement *In witness &c.*

—◆—

No. LXXIX.

No. LXXIX.
 Agent or Factor *An Agreement with an Agent for the Sale of Articles of Manu-*
 (Sale of Goods). *facture.*

Articles of Agreement entered into this day of
 in the year of our Lord 18 Between (*the Principals*)
 of &c. of the one part and (*the Agent*) of &c. of the other
 Recital of ap- part *Whereas* the said (*P.*) are agents and manufacturers of
 pointment of at their works at aforesaid and in order to
 agent. increase the sale of their said goods and commodities being
 desirous of keeping a stock of the various articles of their
 manufacture at for the London markets have agreed with
 the said (*A.*) to become their agent in disposing of the same
 upon the terms and conditions hereinafter mentioned *Now these*
 Covenant by presents witness That for the considerations hereinafter men-
 agent to dispose of manufactures tioned he (*b*) the said (*A.*) doth hereby for himself his heirs ex-
 consigned to him. ecutors and administrators covenant promise declare and agree
 with and to the said (*P.*) and each of them respectively and
 their respective executors administrators and assigns that he the
 said (*A.*) shall and will during the term of years to be
 computed from the day of the date of these presents (but deter-
 minable nevertheless as hereinafter mentioned) accept and re-
 ceive all such goods wares and merchandize as shall be sent or
 consigned to him by the said (*P.*) or any or either of them (*c*) and
 carefully deposit the same in warehouses or other proper places

(*a*) Or, if it be so agreed, say "shall and will allow the said (*F.*) his exe-
 cutors or administrators the sum of £ for every 100 pounds' worth of
 goods sold and so in proportion for any less sum than 100*l.* by way of com-
 mission And also the annual sum of £ by way of salary for his trouble."

Agents copart- (b) If there be several agents in copartnership, say "They the said (*A.*)
 ners. for themselves severally and respectively and for their several and respective
 heirs executors and administrators but not the one for the other of them or
 for the heirs executors or administrators or for the acts deeds or defaults of
 the other of them do and each of them doth hereby covenant &c." *as above.*

Copartners. (c) If copartners, say "And any other person or persons who may be co-
 partner or copartners with them or either of them for the time being," *and*
so throughout.

And also shall and will use his best endeavours and means to sell and dispose of the same at such price or sum or prices or sums as he shall be required in writing by and under the hands of the said (P.) or any or either of them or for such further or other price or sum or prices or sums as can or ought to be had or obtained for the same according to the rise or advance in the current or market price thereof and at the expense and costs of him the said (A.) deliver the same to the several purchasers thereof and in all cases where he shall not receive any express directions relative thereto will so act therein as will to the best of his judgment be most beneficial to them the said (P.) *And also* shall and will from time to time on the first day of every month send and transmit to the said (P.) and to the survivors and survivor of them a full clear and correct statement in writing of all orders he shall have received and executed and of all goods which may have come to his hands and of all such thereof as he may have sold and to whom and whether for ready money or on credit and likewise of all such other matters transactions and things as may in anywise concern the said agency business and which may have taken place during the preceding month *And further* That he the said (A.) his clerks agents or servants shall not nor will without the consent in writing of the said (P.) or the survivors or survivor of them first had and obtained at any time or times within the said period or term of _____ years take or execute any order or direction for vending or disposing of nor shall nor will vend or dispose of or seek or endeavour to vend or dispose of any _____ or other merchandize of the nature or kind aforesaid for or on account of himself the said (A.) his heirs executors administrators or assigns or for or on account of any person or persons whomsoever other than and except them the said (P.) their executors administrators or assigns *Provided always nevertheless* that in case the said (P.) their respective executors administrators or assigns shall not be able to supply or furnish or shall not in fact supply or furnish the said (A.) with such merchandize as aforesaid upon receiving a request or notice in writing from and under the hand of the said (A.) within the time in such notice expressed then and in every such case it shall be lawful for him the said (A.) and he is hereby allowed and required to provide and purchase elsewhere and from any other person or persons whomsoever such quantities of goods and merchandize as he shall have demanded or have occasion

No. LXXIX.
Agent or Factor
(Sale of Goods).

At such price,
&c., as prin-
cipals shall
direct.

And in default
of directions to
the best of his
judgment.

Will not act as
a like agent for
other persons.

If principals
fail to supply
manufactures,
agent may buy
on their ac-
count.

No. LXXIX. <i>Agent or Factor</i> <i>(Sale of Goods).</i>	<p>for in the mean time and until the same can and shall be furnished or supplied by the said (<i>P.</i>) their respective executors administrators or assigns he the said (<i>A.</i>) his executors administrators or assigns at all times and from time to time accounting with the said (<i>P.</i>) their executors administrators and assigns for all and every the net profits to arise from the sale thereof after deducting the first cost or price for the same and the charges and expenses of carriage and also the allowance or poundage hereinafter mentioned <i>And</i> they the said (<i>P.</i>) for themselves severally and respectively and for their several and respective executors administrators and assigns but not the one for the other of them or the executors or administrators or the acts deeds or defaults of the other of them do and each of them doth hereby covenant declare and agree with and to the said (<i>A.</i>) his executors administrators and assigns that they the said (<i>P.</i>) their executors administrators or assigns or some or one of them shall and will from time to time during the subsistence of this agreement unless prevented by some rule of law or equity or other just and sufficient cause consign supply and deliver or cause to be consigned supplied and delivered at their own costs and expense unto the said (<i>A.</i>) with as little delay as may be after notice in writing shall be given to them under the hand of the said (<i>A.</i>) so much and such quantities and sorts or kinds of goods and merchandizes as he the said (<i>A.</i>) shall require <i>And</i> shall and will allow and pay or cause to be allowed and paid unto him the said (<i>A.</i>) his executors administrators and assigns the sum of £ for every £100 worth of the said wares and manufactures as shall be by him vended or disposed of for or on account of the said (<i>P.</i>) their executors administrators or assigns or any or either of them and so in proportion for any less sum or amount than £100 by way of commission upon such sale and disposition (<i>a</i>) <i>And</i> also the annual sum of £ as a recompence for his time and trouble in and about the matters and things aforesaid (<i>a</i>) so long as he</p>
Covenant by principals to supply manufactures ;	
and allow per cent. commission.	
And salary of for trouble.	
Further allowance.	<p>(<i>a</i>) There may be added to this clause, if so agreed, "<i>And</i> that in case the commission after the rate aforesaid shall amount to a greater sum than the said salary or sum of £ they the said (<i>P.</i>) shall and will at the end and expiration of each half-year pay to him the said (<i>A.</i>) or allow him to retain such further sum in addition thereto as will make his said salary equal to what such commission (the same being reckoned upon monies actually received and not upon outstanding debts) may amount unto <i>And also</i> that they the said (<i>P.</i>) shall and will pay unto the said (<i>A.</i>) once every</p>
Expenses.	

shall continue the agent of them the said (P.) under the present agreement and it is hereby agreed that the same shall from time to time be a lien and charge upon the goods and manufactures of the said (P.) from time to time in the hands or care of the said (A.) And further that they the said (P.) their executors administrators or assigns or any or either of them their or any or either of their clerks or servants shall not nor will within the said time or period of _____ years to be computed as aforesaid without the consent in writing of the said (A.) first had for that purpose take or execute any order for supplying or furnishing nor shall nor will supply or furnish with _____ work or other the manufactures aforesaid any person or persons whomsoever who shall reside in the town of _____ aforesaid or within the space or distance of five miles therefrom other than and except him the said (A.) And the said (A.) doth hereby for himself his heirs executors and administrators further covenant and agree with and to the said (P.) and every of them and their respective executors administrators and assigns that he the said (A.) shall and will at all times during the said term of _____ years be true and faithful unto the said (P.) and every of them and their respective executors administrators and assigns in and about the vending and disposing of the goods merchandize and things aforesaid in all things and act therein to the best of his ability knowledge and judgment and also be true and faithful in and concerning all receipts payments accounts matters and things whatsoever by him made had entered into transacted settled or done relative to the premises aforesaid or any of them And shall and will on the _____ day of _____ in every year account with and pay over unto them the said (P.) their respective executors administrators or assigns all sums of money bills notes and securities which shall have been received by or come to the hands of him the said (A.) his executors or administrators by all and every or any such sale or disposition of the said goods and merchandize after deducting the commission and expenses aforesaid (a) And at the end or other sooner determined term of _____ and deliver up goods unsold at the end of the term.

No. LXXIX.
*Agent or Factor
(Sale of Goods).*

Principal not
to appoint
other agents.

Covenant by
agent to be
faithful to prin-
cipals.

To pay over
receipts once
a year;

and deliver up
goods unsold at
the end of the
term.

Agent to accept
bills.

No. LXXIX.
Agent or Factor
(Sale of Goods).

* Will not with-
 out consent
 give credit be-
 yond a certain
 amount.

Will ascertain
 responsibility
 of debtors.

Not to com-
 pound debts,
 &c.

mination of the said term of _____ years deliver up all such goods and merchandizes as shall then remain unsold or be in his or their custody unto the said (*P.*) their executors administrators or assigns or such person or persons as they or the survivor of them his executors administrators or assigns shall in writing under his or their hand or respective hands direct in that behalf *And further* that he the said (*A.*) shall not nor will give credit for or direct to be sold and delivered upon trust or credit any of the goods wares and articles of merchandize aforesaid exceeding the value of £ _____ to any person or persons whomsoever without the consent in writing of the said (*P.*) or some or one of them first obtained for that purpose nor shall nor will sell or contract to sell or deliver or cause direct or order to be sold or delivered upon trust or credit as aforesaid any such goods wares commodities and articles of merchandize whatsoever however small the value or price thereof may be to any person or persons whomsoever whom they the said (*P.*) or any or either of them shall have previously forbidden in writing to be credited or trusted and that when no such caution shall be given to him shall and will be circumspect and cautious and make due inquiries from persons of respectability whether the persons applying to purchase on credit are persons of responsibility and worthy to be trusted and upon making every such inquiry shall and will make a minute or memorandum thereof in a book to be kept for that purpose specifying the name of the person so applying to purchase on credit and the name or names of the person or persons applied to for the purpose of ascertaining whether such person might be trusted with safety and also specifying what was said upon the subject by such person or persons so applied to *And further* that he the said (*A.*) shall not nor will without the consent in writing of the said (*P.*) their executors administrators or assigns or some or one of them under his or their hand or respective hands first obtained for that purpose release compound or give acquittance for any sum of money debt security or obligation nor release nor discontinue any action suit or other legal or equitable proceeding which shall have been instituted or be at any time subsisting or depending to compel the payment or observance of any debt demand or obligation due or belonging to them the said (*P.*) or any or either of them or their

upon him by the said (*P.*) to the amount of the balance he may have in hand on having three days' previous notice given to him thereof."

respective executors administrators or assigns nor sign any bankrupt's certificate letter of licence or other instrument in writing whereby any such sum of money debt security or obligation shall or by possibility may be in anywise discharged vacated diminished in value or otherwise prejudicially affected until the same shall have been absolutely and *bonâ fide* paid and satisfied And further that he the said (A.) shall not nor will at any time hereafter without such consent in writing as aforesaid assign transfer or in any manner make over this present contract or agreement to any person or persons whomsoever And the said (A.) doth hereby further covenant and agree with and to the said (P.) and each of them and their respective heirs executors and administrators that he the said (A.) shall at all times provide and keep all necessary proper and convenient ledgers and books for the purpose of registering and keeping and in which there shall from time to time be fairly and faithfully written posted and kept just and true accounts and particulars of all wares and merchandizes which shall be by him sold and disposed of and of all monies or securities for money which shall have been received by or come to the hand or hands of him for or on account thereof and of the rates sums or prices at which the same were respectively sold and disposed of and also of all credit given on account thereof together with all other matters transactions and things necessary or proper in anywise concerning the premises which said ledgers and books and all bills notes and securities for money letters credits and other writings relative to the matters aforesaid shall at all times during the said term be and remain open and exposed to the free access and inspection of them the said (P.) their respective executors administrators and assigns or any or either of them who shall have free and unrestrained liberty and power as well during the continuance of the said term of years as at all reasonable times within the space of one month from the expiration or other determination thereof to transcribe and copy out the same or any parts thereof at his or their free will and pleasure either by themselves or himself or his or their respective clerks or agents and upon the final settlement and winding up of the said agency business shall and will give and deliver up the same books documents and writings undefaced and unobliterated to the said (P.) And it is hereby further agreed and declared by and between the parties hereto that they shall and will during the continuance of the said agreement on the day of

No. LXXIX.
Agent or Factor
(Sale of Goods).

Nor assign over
the agreement.

Will make
entry of sales,
&c.

Books to be
open to the in-
spection of the
principals.

Accounts to be
settled every
six months.

No. LXXIX. and the day of in every year or within the space
Agent or Factor of next thereafter (unless prevented by sickness or other
(Sale of Goods). unavoidable cause and then as soon after the removal of such
cause as may be) settle and account together respecting the
receipts and payments and other the matters and things relative
to the said sale and disposition of the articles and things afore-
said for which purpose a particular true and faithful statement
or account in writing shall previously to such day of
 and day of in every year be prepared by
the said (A.) and clearly written in a proper book or ledger of
all receipts and payments and other dealings and transactions
which shall have occurred or been had or entered into concern-
ing the same and in such manner and form and to the intent
that the real state and condition thereof may in all things fully
and clearly appear and every such account and statement when
admitted approved and signed by the said parties respectively
and the balance due upon the foot thereof paid by the parties
against whom the same may be shall at all times thereafter be
binding and conclusive upon them and every of them and shall
not afterwards be opened or unravelled unless some manifest
error or mistake shall be discovered or appear therein within
the space of twelve calendar months next thereafter one fair
copy of which said account shall if required be delivered to and
retained by each of the said parties for his own proper use and
it is hereby agreed that in the settlement of every such account
Interest. interest shall or may be charged by and allowed to the said (A.)
upon all balances and arrears of balances although in any such
balance or balances may be included interest upon any former
balance or balances (a) *Provided always* and it is further
Either party to
dissolve the
contract on
notice.

(a) The above clause for vacating the agreement between the parties may
Dissolution of be as follows:—“*Provided always and it is hereby also agreed* that if the
agency. said (A.) shall at any time before the expiration of the said term of
years be desirous of giving up the said agency business it shall and may be
lawful for him so to do upon giving six calendar months’ previous notice in
writing of such his intention to the said (P.) or the survivors or survivor
of them or by leaving such notice at their or his usual place or places of
abode *And it is also agreed* that if the said (P.) or the survivors or sur-
vivor of them shall at any time before the expiration of the said term
of years be minded and desirous to discharge the said (A.) from being
such agent as aforesaid it shall be lawful for them or him so to do upon
giving six calendar months’ previous notice in writing to the said (A.) of
such intention by leaving the same at the counting-house for the time being

agreed by and between all the said parties hereto that if any or either of them be minded or desirous to dissolve the contract or agreement hereby entered into at any time during the said term of _____ years herein before limited for the continuance thereof and one of them shall give six calendar months' notice in writing under his hand unto the other of them of such his mind or desire, that then and upon such notice the said parties do hereby covenant and agree that from and after the expiration of the said six calendar months this present contract and these presents shall cease and determine anything herein contained to the contrary thereof in anywise notwithstanding and then and in such case the said accounts shall be settled and adjusted by and between the said parties to the day on which such notice shall expire in the same manner as if the same term had expired by lapse of time *Provided always* and it is hereby also agreed by the said (*P.*) that the said (*A.*) shall not be answerable for any loss or damage which may happen to any goods or merchandize which shall be sent or consigned to him until or before the same shall come to his hands or within his custody nor for any loss or damage which may happen to any goods or merchandize which have actually come to his hands or custody or committed to his care or charge unless such loss or damage shall happen through his wilful default or neglect *And* in furtherance of these premises they the said (*P.*) have made ordained constituted and appointed and by these presents do make ordain constitute and appoint the said (*A.*) their true and lawful attorney for them in their names and for their use to sue for recover and receive all such sum and sums of money as shall or may be due or owing from any person or persons for or on account of any goods or merchandizes sold by him as their agent as aforesaid and to give receipts and sufficient discharges for the same (which said receipts and discharges shall exonerate all and every person and persons from being in anywise accountable for the application thereof) [*And* do hereby also give unto him the said (*A.*) full power and authority to depute and appoint any other person or persons under him for any of the purposes aforesaid] *And* it is hereby lastly agreed and declared by and between the parties hereto that in case any dispute or question shall arise between them with respect to the carrying these presents into

No. LXXIX.
Agent or Factor
(*Sale of Goods*).

Agent not to
be answerable
for involuntary
losses.

Power of attor-
ney to receive
debts.

Disputes to be
referred to ar-
bitration.

of the said (*A.*) or otherwise any thing herein contained to the contrary notwithstanding."

No. LXXIX. effect or otherwise in relation thereto the same shall be referred to and be decided by two indifferent persons (*a*) one to be named *Agent or Factor* (*Sale of Goods*). by the said (*P.*) and the other by the said (*A.*) and in case of difference between them then by any third person to be by such two persons named and the opinion of such two persons or of such third person or of any two of them shall be binding and conclusive upon each of the said parties hereto and their respective heirs executors and administrators and by them submitted to accordingly without further controversy and which said submission shall be by mutual bonds and such other reciprocal stipulations as are usual or proper in like cases *In witness &c.*



No. LXXX.

No. LXXX.

Broker. *An Agreement with an Agent or Broker to take and dispose of Goods abroad.*

Articles of Agreement made and entered into this day of _____ in the year of our Lord _____ Between the (*Principal*) of &c. of the one part and the (*Agent or Factor*) now at &c. but about to proceed to _____ beyond the seas of the other part *Whereas* the said (*P.*) has shipped with the said (*A.*) on board the good ship or vessel called _____ whereof _____ is master now bound to _____ aforesaid divers goods wares and merchandizes to the amount and value of _____ sterling or thereabouts and hath intrusted the same to the care of the said (*A.*) as his agent or factor to sell and dispose of the same at _____ aforesaid upon the terms and conditions hereinafter mentioned *Now these presents witness* That the said (*A.*) hath agreed and doth hereby covenant with the said (*P.*) as follows that is to say that he the said (*A.*) will take the said goods wares and merchandizes with him to _____ aforesaid and there sell and dispose of or use his best means and endeavours to sell and dispose of the same to the best advantage and for the most money that can be obtained for the same *And* from time to time will remit home to him the said (*P.*) in good bills of

Witness that
agent will take
charge and sell,
&c.

and account
for produce.

Reference to
given person.

(*a*) Or, if so agreed, "To the determination and final decision of _____ of &c. whose determination in writing under his hand shall be binding and conclusive on all parties hereto and not to be litigated or questioned by either of them or their respective representatives."

exchange or otherwise all sums of money which shall arise from such sale and disposition with a true and faithful account of the sales and prices of each and every of the same *And* the said (*P.*) doth hereby covenant promise and agree with and to the said (*A.*) that he the said (*P.*) will from time to time during the term of years to be computed from the day of the date hereof (if they the said principal and agent shall both so long live) but determinable nevertheless as hereinafter mentioned on receiving from the said (*A.*) the remittances or produce arising from the sale of the said goods wares and merchandizes ship and consign to him the said (*A.*) such further or other goods wares and merchandizes as will keep up a stock in the hands and custody of the said (*A.*) of or to the amount or value of sterling *And* the said (*A.*) doth hereby in like manner as aforesaid covenant promise and agree with and to the said (*P.*) that he the said (*A.*) shall and will from time to time during the said term of years determinable nevertheless as hereinafter mentioned sell and dispose of the said goods wares and merchandizes so to be hereafter shipped and consigned to him from time to time to the best advantage and for the most money that can be procured for the same *And* shall and will immediately thereupon remit home to the said (*P.*) in manner aforesaid all such sums of money as shall or may arise from the sale or disposition thereof with a true and particular account of the sales and prices of the same respectively *And also* that he the said (*A.*) shall not nor will during the said term of years purchase or receive for sale any goods wares or merchandizes whatsoever in his own name or on his own account or in the name or on account of any other person or persons than of him the said (*P.*) *And* it is hereby agreed and declared by and between the parties hereto that he the said (*A.*) shall be entitled to and shall have and retain the sum of £ for every £100 (and so in proportion for any less sum) which shall arise or be made by or from the sale or disposition of the goods wares and merchandizes so now or hereafter to be intrusted to the care of or shipped and consigned to him the said (*A.*) and also all necessary customary and reasonable expenses attending the same *And* the said (*A.*) doth hereby further in the manner aforesaid covenant promise and agree that he the said (*A.*) shall and will from time to time and at all times during the said term of years keep or cause to be kept all usual and proper books of account of

No. LXXX.

Broker.

Principal will make future consignments.

Agent will sell such goods, &c.

and remit the produce.

Agent will not act for any other.

Agent to have commission.

Agent will keep accounts.

No. LXXX.
Broker.

Principal or
 his appointee
 may inspect
 books.

and concerning all goods wares and merchandizes which he the said (A.) shall from time to time receive from the said (P.) and of all sums of money bills of exchange or other securities which he or they shall receive for or on account of the said goods wares and merchandizes *And* it is hereby further agreed and declared by and between the said parties hereto that he the said (P.) [*or* “his lawful attorney or attornies or appointee or appointees lawfully authorized in that behalf”] shall or lawfully may from time to time and at all times during the said term of years have at all seasonable times full and free liberty to inspect view and examine the books of accounts so to be kept by him the said (A.) as aforesaid and to take or cause to be taken any extracts from or copies of the same or any part thereof and that he the said (A.) shall and will from time to time produce the said books of accounts unto the said (P.) [and his lawful attorney or attornies or appointee or appointees] for that purpose *Provided always* [*§c. either party to dissolve contract on notice, ante, p. 146*] *In witness* &c.

No. LXXXI.

Agent.

No. LXXXI.

An Agreement between a Tradesman and an Agent, for the Management of his Business, on the Retirement or during the Absence of the Principal.

Variations where there are Sureties on the Part of the Agent.

Recitals.

Articles of Agreement entered into and concluded upon this day of in the year of our Lord Between [*the Principal*] of &c. of the one part and (*the Agent*) of &c. of the other part *Whereas* the said (P.) being desirous of retiring from the active management of the said trade or business of

Witness agent
 to manage and
 trade with the
 present stock.

[*or if so*, “being about to reside abroad for an uncertain period during which time he will be unable to attend to the management of the said trade or business of ”] has agreed with the said (A.) to conduct and manage the same for the term of years [*or* “during the absence of the said (P.)”] upon and for the terms and conditions hereinafter mentioned *Now these presents witness* that for and in consideration of the covenants and agreements hereinafter contained on the part of the said (A.) to be performed the said (P.) doth covenant promise and agree with and to the said (A.) that he the said (A.)

shall and may during the term of years if they the said parties shall so long live [*if so agreed*, “and the said (*P.*) shall so long continue to reside abroad”] (unless the said term shall sooner cease under the proviso for that purpose hereinafter contained) to be computed from the date of these presents deal and trade with and sell and dispose of the stock in trade of him the said (*P.*) now in &c. and manage and improve the same in such manner as to him the said (*A.*) (under the direction of the said (*P.*) when given and in default thereof then of his own discretion) shall seem meet *And* that he the said (*A.*) shall and may by and out of the money which shall arise by such sale disposition or dealing with the said stock in trade from time to time purchase and procure by ready money or on usual credit such other goods or merchandize as shall be requisite to keep up and continue the said stock in trade of a like nature or description of goods wares and merchandizes and of equal quantity and quality *And* by and out of the proceeds which shall from time to time arise from all and every or any of the said sales dispositions and trade and dealing do and shall in the first place well and truly pay the yearly rent of the house shop and warehouses whereon or in which the said trade or business now is or for the time being shall or may be carried on together with all parliamentary and parochial taxes rates and duties which now are or for the time being shall be payable for or in respect thereof and such sums of money as may be requisite to perform the several covenants and agreements on the tenant’s part to be performed in relation thereto *And* in the next place do and shall pay (*a*) to him the said (*P.*) or his assigns yearly and every year during the said term one clear annuity or yearly sum of by equal half-yearly payments on the day of and the day of in each year without any deduction or abatement whatsoever *And* subject thereto do and shall or lawfully may retain the residue and surplus of the said profits [*or* “the sum of £10 per cent. upon the gross produce of the said stock and trade or business”] to and for his own sole use and benefit as a recompense and satisfaction for his care and

No. LXXXI.
Agent.

And purchase
other goods.

Out of proceeds
to pay rent, &c.

To pay princi-
pal an annuity.

Residue for
agent.

(*a*) If the agent is to have a salary out of the proceeds, say, “*And* in the next place do and shall retain unto and for himself the said (*A.*) out of and from the proceeds and receipts of the said trade or business the clear annual sum of £ by equal quarterly payments on &c. in every year to and for his own use and benefit by way of salary or recompense for his time trouble and attention in or to the same.” Salary.

No. LXXXI.

Agent.

Agent will be faithful.

Will keep accounts.

Agent will not trade on his own account.

Agent will account once a year.

trouble in the sale and management of the said stock and conducting the said trade or business (a) And the said (A.) in consideration of the premises aforesaid doth hereby covenant and agree with the said (P.) that he the said (A.) will at all times during the said term of _____ years to be computed and determinable as hereinafter mentioned diligently apply himself to the care and management of the said stock trade and business according to the best of his skill abilities and judgment and apply and dispose of the money which shall arise therefrom in the manner hereinbefore expressed or declared concerning the same and according to the true intent and meaning of these presents And also shall and will from time to time during the said term make true and correct entries in proper books of account to be kept for that purpose of all goods wares and merchandizes and stock in trade which shall from time to time be purchased or sold and of all monies which shall be paid and received for or on account of the same and shall and will at all seasonable times in the daytime permit the same to be inspected and copies of or extracts taken from the same or any part thereof by the said (P.) or such other person or persons as he shall lawfully appoint for that purpose And further That he the said (A.) shall not nor will at any time during the said term or during such part thereof as these presents shall continue in full force and effect directly and openly or indirectly and privately buy or sell or in anywise trade or deal in the trade or business of &c. or any of the goods commodities or articles now or heretofore customarily dealt in by the said (P.) in the name or on account of himself the said (A.) nor otherwise than in the name of the said (P.) only and for the ends and according to the true intent and meaning of these presents nor shall nor will do any act or thing whatsoever whereby the said present or any future stock in trade or any part thereof shall or may be attached extended or taken in execution or otherwise prejudicially affected And also That at Christmas next and also at every succeeding Christmas during the continuance of the said term determinable as hereinafter mentioned or oftener if thereto required by the said

(a) If the surplus is to be paid to the principal, say, "And do and shall well and truly account for and pay over the residue or surplus of the net gains or profits if any by half yearly payments unto him the said (P.) his executors administrators or assigns to and for his and their own use and benefit."

(*P.*) he the said (*A.*) shall and will state and make out a full account and statement in writing of the stock then being in the said trade and also of the profits of the said trade during the preceding year and deliver the same under the hand of him the said (*A.*) to the said (*P.*) in order that the exact and true state of the said business in all respects may appear And that at the expiration or other sooner determination of the said term of years he the said (*A.*) shall and will deliver up to him the said (*P.*) the stock then remaining on hand and all books of account securities vouchers and documents relative to the said trade or business for his or their own use and benefit and which said stock in trade shall then be or be made up by the said (*A.*) of the value of losses by bad debts delay of goods and other inevitable casualties only excepted [*Add proviso for vacating the agreement on notice by either party, ante, p. 146, and clause referring differences to arbitration, §c. (a)*] *In witness &c.*

No. LXXXI.
Agent.

Agent will, at the expiration of term, deliver up stock in hand.

No. LXXXII.

Agreement to form an Association for the Prosecution of Offenders (b).

No. LXXXII.
Prosecution of Offenders.

Articles &c. Between A. B., C. D. and E. F. of the one part and the other persons whose names are hereunto sub-

(*a*) If there be sureties on the part of the agent, add, “And the said (*S.*) hereby jointly and severally agree to pay and satisfy to him the said (*P.*) any damage or loss he may sustain in consequence of any breach of this agreement on the part of him the said (*A.*) by giving credit for goods sold or delivered so as the same shall not exceed the sum of £ which said sum of £ or such part thereof as shall at any time appear to be deficient it is hereby agreed shall be considered a debt due from each and every or either of them the said (*S.*) and shall and may be recovered and recoverable in any court of law or equity in the same manner as any other debt or debts contracted by him or them are or may be recovered And it is hereby further agreed by the said (*A.* and *S.*) that in case the payments to be made to the said (*P.*) shall at any time be in arrear for twenty-one days he the said (*P.*) shall be at liberty to sell and dispose of all or any of the household goods furniture and other effects of him the said (*A.*) for and towards the payment and satisfaction of such arrears in such and the same manner as if the same household goods furniture and other effects had been and were the actual property of him the said (*P.*)”

Sureties.

(*b*) See a fuller form for this purpose in 1 Jarm. Conv. by Sweet.

No. LXXXII. scribed of the other part &c. *Whereas* robberies and felonies have of late become very daring and frequent within the township of _____ in the county of _____ and the neighbourhood thereof and it is deemed absolutely necessary to enter into an association for the prosecution of offenders *Now* we whose names are hereto subscribed do hereby each for himself and herself promise and agree with and to the others of them That we will use our utmost and best endeavours to apprehend all and every person and persons whomsoever who shall be guilty of or commit any robbery burglary larceny felony or other criminal offence against the person or property of us or any of us or by means whereof we or any of us or of our property shall be affected or injured *And* shall and will prosecute to conviction all such offenders *And* for that purpose we do hereby nominate appoint and empower M. W. and C. H. attorneys at law or either of them but nevertheless under the direction and control of the committee hereinafter mentioned to take and use all lawful ways and means to prosecute convict and bring to justice all and every such offender or offenders *And* we agree for the better discovering and bringing to justice of such offenders that we will give such reward to any person or persons who shall inform and give evidence against such offender or offenders as shall be thought proper by the committee to be constituted as hereinafter mentioned *And* in case it shall be necessary that we will use our best endeavours to procure a free pardon for any accomplice or accomplices who shall be concerned in any of the offences aforesaid and shall make a full discovery and give evidence thereof so that one or more of such other offender or offenders may be convicted and brought to justice on such information and discovery (a) *And* for the purposes aforesaid we do hereby further agree for the present to advance and subscribe the sum of _____ shillings to defray the expenses of prosecutions and rewards and such other necessary and inci-

Prosecution of Offenders.

Parties mutually agree to assist in bringing offenders to justice;

to authorize certain attorneys to prosecute;

to offer rewards for detecting offenders,

and procure a pardon for accomplices;

and to subscribe for defraying the expenses;

(a) If the expenses are to be raised by a rate, say, "*And* for the purposes aforesaid we hereby agree that all costs charges and expenses whatsoever which shall be incurred and sustained in any manner in or about the prosecution of such offenders and carrying the present agreement into effect shall be paid and raised by us and every of us jointly by an equal and proportional pound rate and assessment in proportion to the yearly value of the messuages lands tenements and hereditaments by us respectively held and occupied within the said township according to the value at which the same are rated for the relief of the poor within the same township."

dental expenses as shall or may be incurred thereby and also from time to time whenever required to advance and subscribe such further sums of money for the purposes aforesaid as the said committee shall deem expedient in that behalf *And* that all the costs charges rewards and expenses whatsoever which shall be incurred and sustained in any manner in or about the prosecution of such offenders and in carrying this agreement into effect shall be paid out of the said subscription-funds which shall be lodged in the hands of I. II. and Co. bankers for the purposes aforesaid *And* it is hereby mutually agreed by and between the parties hereto that any five of the same parties to be elected annually out of the whole number at a meeting to be convened for that purpose shall be a committee for the time being who shall have the sole management and direction of the association which said committee is hereby authorized and empowered to make such further and other orders and regulations for effecting the purposes aforesaid as they or three of them shall deem expedient and necessary *Provided always* that this association shall extend only to persons and property residing and being within the said township and neighbourhood and five miles thereof and not elsewhere any thing hereinbefore contained to the contrary thereof in anywise notwithstanding (a) *As witness* our hands this day of 18

No. LXXXII.
*Prosecution of
Offenders.*

to elect a committee annually.

(a) Also add, if necessary, *Provided further* that if any of us whose names are hereunto subscribed shall at any time hereafter leave and depart from the said township and shall not hold occupy or enjoy any messuages lands tenements or hereditaments within the same township then we so departing shall be immediately discharged from this agreement on paying up his her or their proportion of expense thus incurred (if any) in carrying into effect the purposes of the said association."

AGREEMENTS FOR THE SALE AND PURCHASE OF ESTATES.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. <i>Agreement must be in Writing.</i> 2. <i>Agreement when void or otherwise.</i>
<i>Construction of Agreements for Sale.</i> 3. <i>Stipulation as to the Title.</i> 4. <i>As to necessary Parties.</i> 5. <i>As to subsisting Leases.</i> 6. <i>Consideration.</i> 7. <i>Expense of preparing Conveyance.</i> | <ol style="list-style-type: none"> 8. <i>Consequences of the Contract.</i>
<i>Representatives of Vendor must complete Contract.</i>
<i>Liability of Purchaser.</i>
<i>Purchaser entitled to intermediate Profits.</i>
<i>Time of the Essence of the Contract.</i> 9. <i>Penal Clause.</i> |
|--|---|

Agreement not binding.

SECT. 1. By the Statute of Frauds, an agreement for the sale of an estate of any lands, tenements or hereditaments, or any interest in or concerning the same, will not be binding until it is reduced into writing, even although a deposit has been paid, *Blagden v. Bradbear*, 12 Ves. 466; but a note or letter will take a case out of the statute, *Ford v. Complin*, 2 B. C. C. 32. An agreement for the sale of timber or potatoes growing upon the land has been held not to be within the statute, because they are mere chattels, and the contract does not confer any exclusive right to the land for a time, *Hob. 173*; *Ld. Raym. 182*; *Parker v. Stanniland*, 11 E. 362; *Emmerson v. Heelis*, 2 Taunt. 38. Where there is an agreement for the sale of real and personal property together, it is held to be an entire contract; and if void as to the land will be void *in toto*, *Cooke v. Tombs*, 2 Anst. 425; see further 1 Sugd. V. & P. 142, *et seq.* 10th edit.; also Crabb's Dig. p. ii. tit. FRAUDS (STATUTE OF).

Agreement when void or otherwise.

2. An agreement for a sale ought to be drawn with great care, so as to contain every important particular. Nothing can be added by parol evidence to supply an omission in an agreement after it has been correctly reduced into writing, provided it was drawn according to the intention of the parties at the time, *Omerod v. Hardman*, 5 Ves. 730. Neither in the construction of agreements will the acts of the parties, tending to show their own conception of the meaning, be taken into consideration, *Clifton v. Walmsley*, 5 T. R. 564; *Iggulden v. May*, 7 East, 237; 9 Ves. 325; see further as to how far parol evidence is admissible to vary or annul written agreements, 1 Sugd. V. & P. chap. iii. sect. viii. ix.; Dig. p. ii. tit. FRAUDS (STATUTE OF).

Construction of agreements for a sale.

Stipulation as to the title.

3. Notwithstanding the clause, "Provided the title be approved by the purchaser's counsel," yet, if it appear to a Court of Equity to be good, a purchaser will be bound to complete the contract,

although it may be objected to by his counsel, *Lewis v. Lechmere*, 10 Mod. 505; *Camfield v. Gilbert*, 4 Esp. 221; unless it be otherwise expressly stipulated by the parties.

Sale of an Estate.

4. As to the words "necessary parties," usually inserted in agreements, they are particularly important when the estate is purchased of trustees or executors, as without such stipulation, it appears that a purchaser cannot insist on any of the *cestui que trusts* being parties, nor upon any other covenants from the trustees or executors, except that they have not incumbered, *Wakeman v. Duchess of Rutland*, 3 Ves. 236, 505.

As to necessary parties.

5. If a person contract for the purchase of an estate with notice of a subsisting lease, he will be considered conusant of the contents of the lease, and be bound by his contract, although such lease should contain covenants contrary to the custom of the country. A purchaser ought, therefore, either to inspect the lease, or obtain a covenant from the vendor, that it contains such covenants only as are justified by the custom of the country, *Taylor v. Stibbert*, 2 Ves. jun. 440; *Daniels v. Davison*, 16 Ves. 249; *Bailey v. Richardson*, 9 Hare, 734; 3 Sugd. V. & P. 449, 10th edit., 1052, 11th ed.

As to subsisting leases.

6. The consideration in an agreement for the sale of an estate must be either certain or reducible to a certainty. A contract for the sale of an estate at so many years' purchase, or at so much per acre, instead of a specified sum, has been deemed a sufficient certainty of price, *Milnes v. Gery*, 14 Ves. 408; *Shannon v. Bradstreet*, 1 Sch. & Lef. 73.

Consideration.

7. The expense of preparing a conveyance must, according to the established practice of the profession, be borne by the purchaser, if there is no express stipulation to the contrary, 2 Ves. jun. 155. And it appears also now to be decided, that he must prepare and tender the conveyance to the vendor, *Baxter v. Lewis*, Forr. 61; 1 Sugd. V. & P. 376, 10th edit., 262, 11th ed. But, as this is a doubtful matter, it ought to be expressly stipulated in the agreement.

Expense of preparing conveyance.

8. Where an agreement has been entered into to sell an estate, the heirs of the vendor are bound by the contract, although not expressly named, *Gill v. Vermuden*, 2 Freem. 199. By 11 Geo. 4 & 1 Will. 4, c. 60, s. 16, the representatives of any deceased vendor, were to be trustees for the purchaser after a decree for a specific performance; so likewise persons in whose names purchases are made; so, by s. 17, tenants for life, &c., of estates devised in settlement might be directed to convey after a decree for specific performance, see 13 & 14 Vict. c. 60, s. 30; and by 11 Geo. 4 & 1 Will. 4, c. 65, s. 27, committees of lunatics are authorized to convey in performance of covenants under direction of the Lord Chancellor. By the 4 & 5 Will. 4, c. 23, s. 2, if a mortgagee or trustee of any land died without an heir, the Court of Chancery might appoint a person to convey, see 13 & 14 Vict. c. 60, ss. 15, 19. By the 5 & 6 Will. 4, c. 17,

Consequences of the contract.

Representatives of deceased vendor must complete contract.

*Sale of an
Estate.*

the act of 1 Will. 4, c. 65, so far as extends to the renewal of leases, which any person of full age and not under disability would be compelled to renew, is extended to Ireland. By the 1 & 2 Vict. c. 69, when the money due on mortgage had been paid to the executor or administrator of a deceased mortgagee, who should have died without being in possession of the land, or in receipt of the rents and profits, the Court of Chancery was empowered to appoint a person to convey in the place of an heir or devisee who should be out of the jurisdiction of the Court, or of whom it might not be known whether he were living or dead, or who might refuse to convey. The stat. 11 Geo. 4 & 1 Will. 4, c. 60; 4 & 5 Will. 4, c. 23; and 1 & 2 Vict. c. 69, are now repealed by 13 & 14 Vict. c. 60, s. 1. But by 13 & 14 Vict. c. 60, the Court of Chancery is authorized to make orders conveying lands vested in lunatic or infant trustees or mortgagees, or in trustees out of the jurisdiction of the Court, or in several trustees, of whom it shall not be known which survived, or when it shall be uncertain whether the trustees last seised be living, or when the trustee last seised shall have died intestate and without an heir, or when it shall not be known who was his heir or devisee, or where a trustee refuse to convey, or in the place of the heir or devisee who shall be out of the jurisdiction of the Court, or who cannot be found, or who shall refuse to convey, of any mortgagee who shall have died without having entered into possession, or in the case of such mortgagee having died intestate and without an heir, or of its being unknown who is his heir or devisee. In all cases under the last-mentioned act the Lord Chancellor or Court of Chancery may appoint a person to convey instead of making an order conveying the land. See 15 & 16 Vict. c. 55, to extend the provisions of "The Trustee Act, 1850." See *Shelford's Real Prop. Stat.* pp. 605—634, 6th edit. So a purchaser, being considered in equity to be owner of the estate from the time agreed on for completing the contract, is liable to any loss which may happen to the estate between the agreement and the execution of the conveyance, *Paine v. Meller*, 6 Ves. 349; 1 Sugd. V. & P. 277, 10th edit. If, therefore, the subject of the contract be that which may be destroyed by fire, it is prudent to stipulate, either that the purchaser should insure, or that the vendor should keep on the insurance. By the same rule, a purchaser will be entitled to any benefit which may accrue to the estate in the intermediate time; as if a person agree to give an annuity for the life of the vendor, or other contingent consideration for an estate, and the vendor die before the conveyance is made, the purchaser will be entitled to a specific performance of his contract, unless it be expressly stipulated to the contrary, *Mortimer v. Capper*, 1 B. C. C. 156; *Jackson v. Lever*, 3 ib. 605; 9 Ves. 246. Another consequence of the general rule in equity, that what is agreed to be done is considered done, is, that the purchaser who contracts for the purchase of an estate will be entitled

Liability of
purchaser.

Purchaser en-
titled to inter-
mediate profits.

to the rent, and the vendor to interest for his money, until the execution of the conveyance, *Seton v. Slade*, 7 Ves. 274. But as the rate of interest to be paid by the purchaser is not fully settled, and frequent disputes arise on account of the delays on one side or the other, it seems desirable that these points should be determined by some express stipulation, Sugd. V. & P. Ch. XVI. s. 1. Another consequence of the rule above mentioned is, that an agreement to surrender copyhold lands will operate to bar the widow's free-bench, although the husband die before the surrender is perfected. *Hinton v. Hinton*, 2 Ves. 631; *Brown v. Raindle*, 3 Ves. jun. 256; but as to dower, see DOWER. In sales by private agreement it is usual to fix a time for completing the contract. By express stipulation time may be made of the essence of the contract. Sugd. V. & P. pp. 305, 306, 11th ed.

9. As to the penal clause very frequently inserted in agreements of this kind, see *ante*, AGREEMENTS, sect. 9, p. 80; see also further, *post*, PURCHASES.

Sale of an Estate.

Time of the essence of the contract.

Penal clause.

No. LXXXIII.

Agreement for the Sale of a Freehold Estate.

Articles &c. Between (*Vendor*) of &c. for himself his heirs (*a*) executors and administrators of the one part and (*Purchaser*) of &c. for himself &c. (*b*) of the other part *Witness* That the said (*V.*) doth hereby agree with the said (*P.*) to sell to him the said (*P.*) *All those* messuages lands &c. (*parcels*) with the appurtenances for the sum of £ (c) to be paid at the time and in the manner hereinafter expressed *And* that he the said (*V.*) shall and will within weeks from the date hereof at his own expense furnish the solicitor of the said (*P.*) with a full and satisfactory abstract of the title of him the said (*V.*) to the whole of the said premises *And* will also at his own expense deduce a clear title thereto (*d*) *And* also that he the

No. LXXXIII.

Sale of Freehold.

Parties.

Vendor agrees to sell,

to furnish abstract of title;

(a) As to the word "heirs," see *ante*, AGREEMENTS, Pref. sect. 2.

(b) Or "by his attorney or agent."

(c) Or, if it be so agreed, say "after the rate of years' purchase according to the present annual value of ." Or "for an annuity or clear yearly rent-charge of £ payable to the said (*V.*) during his life by half-yearly payments on the day of and the day of and to be charged on the said premises and further secured by the bond of the said (*P.*) with a warrant of attorney for entering up judgment thereon." As to the consideration, see *ante*, sect. 6.

(d) Further provisions are sometimes made as to objections and evidence of title. "That the said (*V.*) shall on or before the day of deliver or

No. LXXXIII. said (*V.*) or his heirs and all other necessary parties (*a*) shall and
Sale of will on or before the day of next ensuing (*b*) on
Freehold. receiving from the said (*P.*) his executors or administrators the
that necessary sum of £ at the request costs and charges of him the said
parties shall join in exe- (*P.*) his executors &c. execute a proper conveyance for conveying
cuting convey- and assuring the inheritance and fee-simple of and in the said
ance. messuages lands and hereditaments with the appurtenances unto
the said (*P.*) his heirs and assigns free from all incumbrances (*c*)
Purchaser In consideration whereof the said (*P.*) hereby agrees with the
agrees to pay said (*V.*) That provided the counsel of the said (*P.*) shall ap-
purchase- prove of the title of the said (*V.*) to the said premises he the
money. said (*P.*) his heirs executors administrators or assigns on the
execution of such conveyance as aforesaid shall and will (*d*) pay
the said sum of £ unto the said (*V.*) his executors or
administrators (*e*) And it is hereby further agreed by and

cause to be delivered to the said (*P.*) or his solicitor an abstract of the title
of him the said (*V.*) to the said freehold messuage or tenement and premises
and that all objections and requisitions in respect of such title shall be made
by the said (*P.*) or his solicitor and sent by him to the said office of the said
Mr. within days from the delivery of the abstract And all objections
or requisitions which shall not be made within such time as aforesaid shall be
considered to be waived That the production and inspection of any deeds or
other documents not in the possession of the said (*V.*) and the procuring and
making of all certificates attested office or other copies of or extracts from
any deeds wills or other documents and of all declarations or other evidences
whatsoever not in his possession which may be required whether for the
purpose of verifying the abstract or otherwise shall be at the expense of the
said (*P.*) That all recitals and statements contained in any deeds wills or
other instruments of title dated twenty years or upwards prior to the date of
this agreement shall be deemed conclusive evidence of the facts and matters
therein recited or stated."

(*a*) As to necessary parties, see *ante*, sect. 4.

(*b*) If the consideration be an annuity, say "on having the said annuity
secured to the said (*V.*) in manner as aforesaid."

(*c*) If there be subsisting leases, and if it be so agreed, say, "except only
leases at rack-rent not exceeding years and containing only usual cove-
nants," see *ante*, sect. 3.

(*d*) If the consideration be an annuity, say, "well and effectually grant
the said annuity or clear yearly sum of £ unto the said (*V.*) and secure
the same upon the premises in manner as aforesaid."

(*e*) If there be timber to be taken at a valuation, say, "And shall and will
also pay for all the timber growing on the said estate such sum of money as
the same shall be valued at by two indifferent persons to be chosen the one
by the said (*V.*) and the other by the said (*P.*) or an umpire to be chosen by
them In which said valuation it is agreed that all trees which shall be of
the value of or upwards shall be accounted timber And in case it

between the said (V.) and (P.) as follows viz. that the said conveyance shall be prepared by and at the expense of the said (P.) except a release of incumbrances or an assignment of outstanding terms if not before assigned *And* that the same shall be settled and approved of on the parts of the said (V.) and (P.) by their respective counsel *And that* each of them the said (V.) and (P.) shall pay the fees of his own counsel *And that* the rates taxes and outgoings payable for or in respect of the said premises to the day of shall be discharged by the said (V.) his executors and administrators *And also* that the said (P.) his heirs or assigns shall have receive and take the rents and profits of the said messuages and premises from the day of next ensuing for his and their own proper use *And (a)* if the said conveyance shall not be executed by the necessary parties and the said purchase-money not paid on or before the said day of then the said (P.) shall from the same day pay interest for the said purchase-money (b) at the rate of £ per centum per annum *And further* that any trifling error or omission which may appear to have been made with respect to the quantity or other description of the said premises [so that the same be not essentially different in quality from those herein described] shall not vacate the contract but a reasonable abatement shall be made by the said (V.) his executors &c. *And further* that any loss or damage which may happen to the said premises by fire or otherwise or any benefit (c) which may accrue to it between

No. LXXXIII.

*Sale of
Freehold.*

Conveyance at purchaser's expense.

Vendor to pay rates, &c. to a given day.

Purchaser to receive rents &c. from the same day.

Purchaser to pay interest from a given day.

should be necessary to postpone the valuation until the fall of the leaf that the said (P.) shall give to the said (V.) a bond in a sufficient penalty conditioned for the payment of the sum at which the said timber shall be valued within one calendar month after such valuation."

(a) Or, if it be so agreed, say, "*And* if the said (V.) shall not deliver an abstract of his title to the said (P.) or his solicitor before the expiration of one calendar month from the date hereof or if in the opinion of the counsel of the said (P.) he the said (V.) shall not deduce a good and marketable title to the whole of the said premises then or in either of the said cases this present contract shall at the option of the said (P.) be to all intents and purposes void and all reasonable expenses incurred by him in investigating the title shall be borne by the said (V.) his heirs executors or administrators." A similar provision may also be inserted in case the purchase-money be not paid on the day appointed. As to the consequences of the contract, see *ante*, sect. 8.

Time the essence of the contract.

(b) As to the payment of interest, see *ante*, sect. 8.

(c) As to the consequences of the contract in this respect, see *ante*, sect. 8.

No. LXXXIII. the date of these presents and the completion of the purchase shall not in anywise affect or vacate this contract (d) *In witness*
Sale of
Freehold.
 whereof the said (V.) and (P.) have hereunto set their hands the day and year first above written.



No. LXXXIV.

Another
(short Form).

No. LXXXIV.

Another (short Form).

Memorandum of an agreement made the day of
 Between &c. The said (V.) in consideration of the sum of
 £ of lawful money of Great Britain to be paid to him by
 the said (P.) and also of the agreement hereinafter mentioned
 doth agree with the said (P.) that he the said (V.) shall and
 will at his own cost and charges make out a good title and at
 the costs and charges of the said (P.) convey and assure to him
 and his heirs in such manner as counsel shall advise a good
 estate in fee-simple in *All the* allotment or allotments to be
 allowed and set out to him upon the commons or waste grounds
 of N. in the county of by the commissioners empowered
 by an act of parliament lately passed for the inclosure thereof
 for or in respect of all his the said (V.'s) estate in the commons
 aforesaid *And* the said (P.) doth hereby agree with the said
 (V.) That he the said (P.) shall and will at his own expense
 prepare such conveyances and assurances as aforesaid and also
 when and as soon as the said commissioners shall make and
 execute their award pay to the said (V.) the sum of £ as
 and for the purchase-money *And also* shall and will pay and
 discharge all sums of money which shall be occasioned by the
 obtaining the said act of parliament *And also* all the charges
 of dividing allotting and setting out the said allotment so con-
 tracted to be sold as aforesaid and of the award to be made by
 the said commissioners touching the same which the said (V.)
 would have been or shall be liable to pay in respect of the said
 allotment As witness our hands.

(d) If it be necessary, say, "*And further* that if any of the title deeds or writings relating to the said premises shall be found to concern other property of the said (V.) they shall be retained by him on his delivering at his own expense true and attested copies duly stamped and on his entering into the usual covenant to be prepared at his own expense for producing the originals."

SALE OF COPYHOLD ESTATES.

- | | |
|---|---|
| 1. <i>Agreement to sell defeats Free-bench.</i> | 3. <i>Steward authorized to demand Fines.</i> |
| 2. <i>Purchaser to pay Expense of Admittance.</i> | 4. <i>To prepare Surrender.</i> |

SECT. 1. A widow will be defeated in equity of her free-bench of lands, of which her husband died seised, by his agreement for the sale, although he die before the surrender, *Hinton v. Hinton*, 2 Ves. 631. Agreement to sell defeats free-bench.

2. In the absence of any stipulation to the contrary, the expense of the surrender and admittance, including the fine to the lord, which is not payable until admittance, *Rea v. Ld. of the Manor of Hendon*, 2 T. R. 484, must be borne by the purchaser, *Drury v. Mann*, 1 Atk. 96, although the vendor agrees to surrender at his own expense, *Graham v. Sime*, 1 East, 632. But if the vendor have not been previously admitted, he must bear the expense of his own admittance, in order to enable him to make a surrender to the purchaser, 1 Atk. 96, n. Purchaser to pay expense of admittance.

3. The 48 Geo. 3, c. 149, s. 34, authorizes stewards, previously to the acceptance of any surrender, or the granting or making of any admittance, voluntary grant, or licence to demise in court, to demand the payment of all lawful fees for the same, and for the copy of court-roll to be made thereof, with the stamp duty payable on such copy of court-roll. Steward authorized to demand fines.

4. Where it is the custom of the manor for the steward to prepare the surrender, he may insist upon so doing, *Rea v. Rigge*, 2 B. & Ald. 550. To prepare surrender.

No. LXXXV.

Agreement for the Sale of a Copyhold Estate of Inheritance.

No. LXXXV.

Sale of Copyholds.

Articles &c. Between &c. Witness That the said (Vendor) (a) doth agree to sell and the said (Purchaser) to purchase the inheritance in fee-simple in possession according to the custom of the manor of M. of All those customary or copyhold pieces or parcels of land situate in the said manor &c. and containing by estimation acres more or less at or for the price or sum of £ And the said (V.) doth hereby agree to

Vendor agrees to sell and purchaser to buy.

(a) Consequences of the contract, see *ante*, sect. 8.

No. LXXXV.

*Sale of
Copyholds.*

Vendor agrees
to furnish ab-
stract, and to
surrender pre-
mises ;

and enter into
covenants for
title.

Purchaser
agrees to pay
purchase-
money and
expenses, &c.

deliver unto the said (*P.*) within one month from the date hereof at his own expense a full and satisfactory abstract of the title of him the said (*V.*) thereto *And also* that he the said (*V.* and all other necessary parties (if any) shall and will on or before the day of next ensuing duly surrender the said premises according to the custom of the said manor to the use of the said (*P.*) his heirs and assigns or as he or they shall direct to be holden at the will of the lord of the said manor free from all incumbrances whatsoever except the quit-rents and the customary dues and services from the day of *And that* the said (*V.*) shall at the time of such surrender enter into the usual covenants for the title *And* the said (*P.*) doth hereby promise and agree That on such surrender being made and such covenants being executed as aforesaid he the said (*P.*) shall and will pay to the said (*V.*) the said sum of £ of &c. *And* shall pay the (*b*) expenses of the said surrender (*c*) and all fees (*d*) and fines upon the surrender and admission of the said (*P.*) to the said premises and that the said deed of covenants shall be prepared by and at the expense of the said (*P.*) [See other provisions, *ante*, p. 161] *In witness* &c.



No. LXXXVI.

*Purchase by
Agent.*

No. LXXXVI.

*Agreement for the Sale of a Freehold and Copyhold Estate
to an Agent.*

Obs. As to when an agent must be authorized by a writing and when by parol, see *ante*, Pref. *Principal and Agent*.

Articles &c. Witness That the said (*Vendors*) do hereby agree with the said (*Agent for purchaser*) as agent as aforesaid to sell to him and the said (*A.*) as such agent doth hereby agree to purchase of the said (*V.*) *All that* freehold and copyhold messuage or tenement and farm with the barn stables yards gardens orchards lands meadows pastures feedings commonage timber and other trees rights members and appurtenances thereunto belonging which premises are situate at &c. and contain by survey 24 acres [and which said lands are to be taken at that measurement be the same more or less] and are now in the occupation

(*b*) As to expenses, see *ante*, sect. 2.

(*c*) Preparing surrenders, see *ante*, sect. 4.

(*d*) Payment of fees, see *ante*, sect. 3.

of &c. or their undertenants at or for the price of £
 whereof £ have been paid by (A.) before the execution
 of these presents to the said (V.) as they do hereby respectively
 acknowledge And the said (V.) do hereby further agree with
 the said (A.) as such agent that they the said (V.) shall at their
 expense deduce a clear title to the said hereditaments and pre-
 mises and shall on or before the day of next on
 receiving from the said (Purchaser) or (A.) or either of them the
 sum of £ residue of the said purchase-money at the costs of
 the said (P.) or (A.) execute at aforesaid a proper con-
 veyance surrender and assurance to be settled by their respective
 counsel for conveying and assuring the fee-simple and inherit-
 ance of the same premises unto the said (P.) his heirs or assigns
 or unto such person or persons as he or they shall appoint free
 from all incumbrances except the land tax of and a quit
 rent of payable to the manor of at And the
 said (A.) as such agent as aforesaid hereby agrees with the said
 (V.) that he shall &c. (pay purchase-money) And it is hereby
 agreed by and between the parties hereto that all taxes rates and
 outgoing payments for the said premises on the said
 day of shall be paid by the said (V.) And that the said
 (P.) shall be put in quiet possession of the premises at that time
 and be entitled to the rents and profits thereof thenceforth And
 also that the said (P.) shall be entitled to take the growing crops
 of corn hay and clover at a valuation to be made thereof by two
 indifferent persons one to be chosen by the said (V.) and the
 other by the said (P.) or in case they shall disagree then by a
 third person to be chosen by such two persons such valuation to
 be made and concluded between the day of and the
 day of next and immediately after the completion
 thereof possession of the said crops shall be delivered to the said
 (P.) upon the paying to the said (V.) a deposit of £ per
 cent. in part of the amount of such valuation [and giving secu-
 rity for payment of the remainder thereof on the said day
 of next] but in case the said (P.) shall decline to take the
 said crops then the said (V.) shall be at liberty either to harvest
 or sell the same by public auction or private contract And it is
 further agreed that the said (P.) shall pay [for certain fixtures
 enumerated] also for the muck mixtures or compost and the
 labour also for all such other things as are customary between an
 outgoing and incoming tenant as the same shall be agreed upon
 and valued by the said two indifferent persons or third person

No. LXXXVI.

Purchase by
 Agent.

No. LXXXVI. as aforesaid *And* that such valuation shall be made three weeks
Purchase by before Michaelmas and the amount thereof paid to the said (V.)
Agent. on the said day of .
In witness &c.

Received the day and year first above written of and from the
said (P.) by the hands of the said (A.) as such agent aforesaid
the sum of £ in part of the consideration money to be paid
to us.

Witness G. B.

(Vendors.)



No.
LXXXVII.
By Guardians.

No. LXXXVII.

*Agreement between two Guardians respecting the Purchase
of an Estate by them for their Infant Ward.*

Articles of &c. Between A. B. of &c. of the one part and
B. C. of &c. of the other part *Whereas* the said A. B. and B. C.
are testamentary guardians of E. D. an infant under the age of
21 years *And whereas* the said E. D. is under the will of his uncle
tenant in tail of the manor of G. in &c. *And whereas* certain
lands and hereditaments at in part of the estates of
the coheiresses of &c. some time since were offered to sale and
the same have been purchased by and conveyed to the said A. B.
and B. C. their heirs and assigns at or for the price or sum of
£ *And whereas* the said lands &c. lie contiguous to or
intermixed with the estates of which the said E. D. is tenant in
tail under the will of his said uncle and are in all respects a
desirable purchase for the said E. D. and the said A. B. and
B. C. agreed to purchase the same and being possessed of cer-
tain sums of money belonging to the said E. D. the infant they
the said A. B. and B. C. advanced the sum of £ part of
the said monies in the purchase of the said estate *Now these
presents witness* and it is hereby declared between and by the
said A. B. and B. C. in manner following that is to say That the
sum of £ advanced by them in purchase of the said
estate at was the proper money of the said E. D. the in-
fant and by them the said A. B. and B. C. advanced out of his
personal estate and that when and as soon as the said E. D. shall
attain the age of 21 years he the said E. D. shall be offered the
said purchase on condition of his agreeing to ratify and confirm
the said purchase and all accounts and transactions relating

thereto and that if he shall accept and agree to the said purchase on these terms Then and in that case the said estate shall be immediately conveyed to him the said E. D. his heirs or assigns or as he or they shall direct or appoint but that if the said E. D. shall refuse to accept the said purchase upon the terms aforesaid Then and in that case they the said A. B. and B. C. their heirs and assigns shall retain the same for their own proper use and benefit and shall be considered as having originally purchased the same with their own respective monies advanced by them respectively in equal shares and proportions and under an agreement that there shall be no survivorship between them and shall hold the same as if originally seised thereof as tenants in common in fee-simple and not as joint tenants *And further* that every benefit or advantage which may be derived or any loss or detriment which may be sustained by reason of their having made the said purchase shall be borne by them the said A. B. and B. C. and their respective heirs executors and administrators in equal shares and proportions *In witness &c.*

No.
LXXXVII.
By Guardians.

Agreement whereby Part of Purchase Money is to remain in Purchased Lands until Minors attain 21—see post, PURCHASES.

No. LXXXVIII.

Agreement for the Sale of Leasehold Premises, with a Covenant to take the Furniture.

No.
LXXXVIII.
Sale of Leaseholds.

- | | |
|---|---|
| 1. <i>Executors bound by Agreement.</i> | 4. <i>Taking a New Lease.</i> |
| 2. <i>Production of Lessor's Title.</i> | 5. <i>Not Assigning without Lessor's Consent.</i> |
| 3. <i>Indemnity against Rents and Co-tenants.</i> | |

SECT. 1. An agreement for the sale of a leasehold interest will be binding on the personal representatives, although not named, *Smith v. Watson*, Bunb. 55. Executors bound by agreement.

2. Provision ought to be made in the contract to assign a lease as to the production of the lessor's title. A court of equity will not compel specific performance where the vendor is plaintiff, unless he can show a good title in the lessor to the estate out of which it is Production of lessor's title.

No. LXXXVIII. <i>Sale of Leaseholds.</i>	granted; and, consequently, a vendor who is either unwilling or unable to show a title must expressly stipulate to that effect in the contract, <i>White v. Foljambe</i> , 11 Ves. 337; <i>Deverell v. Ld. Bolton</i> , 18 ib. 505; <i>Fildes v. Hooker</i> , 2 Mer. 424.
Indemnity against rents and covenants.	3. A purchaser of a leasehold is bound to indemnify the lessee against the rents and covenants in a lease, although the vendor may not, at the time of the contract, have made any stipulation to that effect. See <i>Assignments of Leases, post</i> ; <i>Staines v. Morris</i> , 1 Ves. & Bea. 18.
Taking a new lease.	4. Under a contract for the residue of a term, a purchaser will not be compellable to take a new lease, <i>Mason v. Corder</i> , 7 Taunt. 9.
Not assigning without con- sent.	5. Where there is a clause in a lease against assigning without the lessor's consent, the vendor is bound to procure such consent, <i>Lloyd v. Crisp</i> , 5 Taunt. 249; <i>Mason v. Corder</i> , 7 Taunt. 9; <i>S. C.</i> 2 Marsh. 232.
Vendor agrees to assign pre- mises for the residue of the term.	<p><i>Articles &c.</i> Between &c. as follow The said (<i>Vendor</i>) in consideration of the sum of £ to be paid as hereinafter is mentioned doth hereby for himself his &c. (<i>a</i>) agree with the said (<i>Purchaser</i>) his &c. that he the said (<i>V.</i>) shall and will on or before the day of convey unto the said (<i>P.</i>) at his own costs and charges <i>All that</i> leasehold messuage &c. (<i>parcels</i>) for the residue of the term now to come and unexpired granted to the said (<i>V.</i>) by virtue of an indenture of lease bearing date on or about the day of subject to such payments conditions and covenants as in the said lease are reserved to be paid kept and performed by the lessee (<i>b</i>) in consideration whereof the said (<i>P.</i>) doth hereby agree with the said (<i>V.</i>) that he the said (<i>P.</i>) shall and will well and truly pay unto the said (<i>V.</i>) his executors or administrators the sum of £ of lawful money of Great Britain on or before the day of and on the execution of the conveyance by which the said premises are to be granted and conveyed as aforesaid in full for the purchase of the said premises <i>And</i> it is hereby further agreed by the parties hereto that such household furniture goods and effects as the said (<i>V.</i>) shall think proper to leave in and about the said premises at the time that he shall quit possession thereof shall immediately afterwards be valued and appraised by two indifferent persons which the said parties hereby agree to choose for that</p>
Purchaser agrees to pay purchase- money.	
Furniture to be taken at a valuation.	

(a) As to the naming of executors, &c., see *ante*, sect. 1.

(b) As to the necessity of any stipulation in the contract for indemnifying the vendor against the rents and covenants in the lease, see *ante*, sect. 3. Also as to the covenant respecting the title of the lessor, see *ante*, sect. 2.

purpose and that the same shall be taken by the said (P.) according to such appraisement And (a) the said (P.) doth hereby agree that he the said (P.) shall and will within months after the said appraisement shall be delivered to him pay such sum of money as the same household furniture [or "stock" &c.] shall be appraised or valued at as aforesaid In witness &c.

No.
LXXXVIII.
*Sale of
Leaseholds.*

Purchaser
agrees to pay
for the furniture
when valued.



No. LXXXIX.

Agreement for the Purchase of Leasehold Premises.

No. LXXXIX.

*Purchase of
Leaseholds.*

Articles of Agreement made this day of in the year Between (Vendor) of &c. of the one part and (Purchaser) of &c. of the other part as follows that is to say The said (V.) doth hereby agree to sell and the said (P.) doth agree to purchase at the sum of £ All that leasehold messuage &c. situate &c. with the piece or parcel of meadow ground abutting and adjoining &c. containing by estimation &c. acres be the same more or less for the residue now to come of a term of years commencing from the day of granted to the said (V.) by an indenture of lease bearing date the day of in the year and expressed to be made between &c. And it is hereby agreed that all fixtures now upon the said premises [and mentioned in a schedule hereunto annexed] shall be taken by the said (P.) at a valuation to be made thereof in the usual way That the said (V.) will deliver unto the said (P.) or his solicitor within one calendar month from the date hereof an abstract of the title of him the said (V.) from the commencement of the said term but not further back [or "and of the original or ground landlord of the said premises"] And upon receiving the said sum of £ will at the expense of the said (P.) execute an assignment of the said premises for the whole of the then re-

Agreement for
purchase.

Fixtures to be
taken at a
valuation.

Vendor to de-
liver abstract.

To execute
assignment.

(a) If the agreement be to sell the stock of a farm, say, "And the said (V.) doth agree to bargain and sell to the said (P.) All the corn grain grass and roots now growing on the said farm or being in or upon any part of the said premises And also all the horses cows pigs carts waggons ploughs and all other live and dead stock belonging to the said (V.) and on the said premises the whole to be taken at an appraisement or valuation to be made by two indifferent persons whom the said parties hereby agree to choose &c. for that purpose and that the same shall be taken &c." (as above).

No. LXXXIX. sidue of the said term [*or* “for a term wanting one day of the said residue at the option of the said (*P.*)”] and deliver up the said indenture of lease and all assignments thereof if any unto the said (*P.*) *And* upon the execution of such assignment as aforesaid the said (*P.*) will pay the said purchase-money or the sum of £ with the valued price of such fixtures *And* at the request and expense of the said (*V.*) will execute a bond or a deed of covenant at the option of the said (*V.*) to pay the rent and to perform and observe the covenants contained in the said indenture of lease and to indemnify the said (*V.*) therefrom *And* the said (*P.*) shall be entitled to the increase and produce of the said premises from the day of now next [*or* “last”] up to which time all rent taxes and other outgoings shall be cleared by the said (*V.*) *And* &c. [*time to be of the essence of the contract, see ante, p. 161, n. (a)*] That in case the said contract shall be abandoned for defect of title all reasonable costs and expenses paid or sustained by the said (*P.*) in investigating the said title or in insuring the said premises against loss by fire shall be borne and paid by the said (*V.*) *And further* that any error in the length of the term of years now to come in the premises (so that such term be an original and not an under or derivative term) shall not vacate this agreement but a reasonable abatement shall be made or equivalent given as the case may require to be ascertained in case of difference by the opinion of a surveyor in the usual manner *In witness &c.*

*Purchase of
Leasholds.*

Purchase-
money to be
paid.

Costs in case
of defective
title.

Errors in de-
scription not
to vacate
contract.

No. XC.

Agreement for the Sale of an Advowson.

No. XC.
*Sale of
an Advowson.*

Obs. 1. The grant of an advowson during a vacancy is void, *quoad* the next presentation, *Grey v. Hesketh*, Ambl. 258. The purchase of an advowson in fee, even if the incumbent, to the knowledge of both parties, be in a dying state, is not simoniacal, if it be without the privity of the clerk afterwards presented, and with no view to his presentation, *Fox v. The Bishop of Chester*, 2 B. & C. 635; *Barrett v. Glub*, Dick. 516; *Alston v. Atlay*, 6 Nev. & M. 686. By the 12 Ann. s. 2, c. 12, if any clerk purchase for himself the next presentation, and is presented thereon, the next presentation is void.

2. If a church become vacant by the promotion of the incumbent to a bishopric, the queen, by her prerogative, has the next presenta-

tion; provision is therefore frequently made for this event in the contract for the purchase of an advowson.

No. XC.
Sale of
an Advowson.

Articles of Agreement made and entered into this day
of Between (*Vendor*) of &c. for himself his heirs execu-
tors and administrators of the one part and (*Purchaser*) of &c.
for himself his heirs executors and administrators of the other
part as follows viz. The said (*V.*) doth hereby agree with
the said (*P.*) to sell *All that* advowson donation right of pa- Advowson.
tronage and presentation of in and to the rectory and parish
church of with the rights members and appurtenances
and the inheritance thereof free from all incumbrances whatso-
ever charged upon or in anywise affecting the said advowson
or the incumbent thereof save and except the land-tax amount-
ing to £ per annum a tenth amounting to £ per
annum synodals and procurations amounting to £ to him
at or for the price or sum of £ and that he the said
(*V.*) will within one month from the date hereof at his own Vendor to show
expense make and deliver unto the said (*P.*) or his solicitor an good title.
abstract of the title of him the said (*V.*) to the said advowson
and will also at his own expense deduce a clear title thereto
And also that the said (*V.*) or his heirs and all other necessary
parties shall and will on or before the day of next
on receiving from the said (*P.*) his executors or administrators
the said sum of £ at the costs and charges of him the
said (*P.*) his heirs executors administrators or assigns execute Convey to
a proper conveyance for conveying and assuring the fee simple purchaser.
and inheritance of and in all the said advowson with the
appurtenances unto the said (*P.*) his heirs or assigns [*or* “as
he or they shall direct”] free from all incumbrances except
as aforesaid *And* shall in the said conveyance enter into the Covenant for
usual covenant for the production of all deeds evidences and production of
writings concerning the said advowson and for the delivery deeds.
from time to time at the request and expense of the said (*P.*)
his heirs or assigns of attested or other copies of the same
deeds evidences and writings *And* the said (*P.*) hereby agrees
with the said (*V.*) that he the said (*P.*) his heirs executors
administrators or assigns shall and will on the execution of
such conveyance as aforesaid pay the sum of £ unto the
said (*V.*) his executors or administrators *And* it is hereby Payment of
further agreed by and between the said (*V.*) and (*P.*) as follows expenses.
viz. That the conveyance shall be prepared by and at the
expense of the said (*P.*) and that the same shall be settled

No. XC.
*Sale of
 an Advowson.*

In case the church be vacant, to present nominee of the purchaser.

Promotion of incumbent to a bishopric.

and approved of on the parts of the said (V.) and (P.) by their respective counsel and that each of them the said (V.) and (P.) shall pay the fees of his own counsel And it is hereby further agreed and declared by and between the parties hereto That in case of the death resignation cession deprivation or relinquishment of the said (V.) on or before the day of next ensuing he the said (V.) his heirs &c. shall and will duly present such parson to the said rectory as the said (P.) shall nominate And that if the presentation should devolve on the crown in consequence of the present incumbent being promoted to a bishopric before the day of then and in such case so much of the purchase-money as shall be equal to the value of the next presentation to be ascertained by two indifferent persons to be appointed in the usual manner or by their referee to be chosen by them if they disagree shall be retained by the said (P.) [or "this contract shall not be affected thereby nor shall the said (P.) be entitled to any deduction out of the said purchase-money" *as the case may be.* See *ante*, p. 161, for other clauses to be inserted when necessary.]



No. XCI.

No. XCI.
*Next
 Presentation*

Agreement for the Sale of a next Presentation to a Rectory.

Articles of Agreement made this day of 18

Between (*Vendor*) of &c. for himself his heirs executors and administrators of the one part and (*Purchaser*) of &c. for himself his heirs executors and administrators of the other part The said (V.) agrees to sell to the said (P.) for the sum of £ the first and next turn nomination and presentation of and to the rectory and parish church of in the county of which shall or may happen next after the date hereof by the death resignation cession or deprivation of the present incumbent thereof or by any other ways or means whatsoever And also to deliver unto the said (P.) within months after the date hereof an abstract in the usual manner of the title of the said (V.) to grant the next presentation of and to the said rectory and parish church And also on receiving the said sum of £ to execute a grant or other assurance of the next presentation to the said rectory and parish church unto the said (P.) his executors administrators or assigns or as he or

they shall direct in which all proper and necessary parties and persons beneficially interested in the purchase-money shall join and which shall contain the usual and proper covenants for title quiet enjoyment and further assurance and shall be prepared by and at the expense of the said (P.) *And also* to deliver at his own charges to the said (P.) at the execution of the said conveyance true and attested copies of the several title deeds evidences and writings relating to the said rectory and parish church and by the same conveyance covenant in the usual manner to produce the same title deeds evidences and writings and to permit the said (P.) to have future copies thereof at his own cost *And* the said (P.) agrees upon the execution of the said conveyance to pay to the said (V.) the sum of £ [Add clause, time to be the essence of the contract, see ante, p. 161, n. (a)] *And* it is further agreed that if the present or any succeeding incumbent of the said rectory should at any time hereafter during his incumbency of the said rectory be created a bishop whereby the right of presentation to the same rectory may devolve to the crown then the said (P.) shall have the first or next turn or right of presentation to the said rectory after the crown *In witness &c.*

No. XCI.
Next
Presentation.

No. XCII.

Agreement to assign a Boarding-School, Lease of the Premises, and Furniture.

No. XCII.
Sale of a Boarding School.

Articles of &c. Between (Vendors) of &c. of the one part and (Purchaser) of the other part *Witness* That for and in consideration of the sum of £ to be paid on the day of next ensuing they the said (V.) do hereby agree to relinquish and assign *All that* the boarding-school conducted by them at and *All that* the messuage or tenement garden and premises where the same has been heretofore carried on and to execute on receipt thereof a good and valid assignment in the law of the said boarding-school and premises and also the indenture of lease by which the said (V.) hold the same for the residue of the term then to come and unexpired but subject to the rent and covenants therein reserved and contained *together* also with the two policies of insurance whereby the said premises

Vendor agrees to assign goodwill of the school and the messuage;

also policies of insurance.

No. XCII. and the household furniture goods and effects therein contained
Sale of a Board- are insured from fire *And also* shall and will pay all rent and
ing School. taxes due for the said messuage up to the said day of
Purchaser now ensuing *And* the said (P.) doth hereby agree with the
agrees to pay said (V.) that she the said (P.) shall and will on the said
consideration. day of well and truly pay to them the said
(V.) the full sum of £ of lawful &c. as a premium or
Valuation. consideration for the said boarding-school messuage &c. and
shall and will accept such assignment thereof respectively as is
hereinbefore mentioned *And* it is hereby mutually agreed by the
parties hereto that a valuation shall forthwith be made of the
household furniture goods chattels linen fixtures and things which
are in and upon the said premises by two persons one to be chosen
by the said (V.) and the other by the said (P.) *And* the said
Purchaser (P.) doth hereby agree to pay unto the said (V.) calendar
agrees to pay the amount. months after the said day of next ensuing the full
amount at which the said furniture and effects shall have been
valued *In witness* &c.



No. XCIII.

No. XCIII.

*Purchase of
Timber.**Agreement for the Sale of standing Timber.*Description of
trees agreed to
be purchased.

An Agreement made &c. Between (Vendor) of &c. of the one
part and (Purchaser) of &c. of the other part as follows (that is
to say) The said (V.) agrees to sell and the said (P.) agrees to
purchase at the sum of £ sterling to be paid in manner
hereinafter mentioned the timber and other trees fir and larch
trees marked with the letter F in white paint with two chops or
notches under the same growing or situated in a certain wood
called or known by the name of No. of ash trees
growing or situated and being in the same wood marked with
the letter A and notched as aforesaid No. of oak trees grow-
ing or situated and being in or upon a certain field or piece of
land called or known by the name of and marked with the
letter O and notched as aforesaid and No. of elm or witch
trees growing or situated and being in or upon the same land or
field &c. &c. together with all and every the branches boughs
heads and tops and other parts of the same trees respectively
down to the soil or ground wherein or whereupon the same shall
respectively grow but not the roots or other parts thereof which

shall be within or below the surface of the said ground or soil (a) No. XCIII.
 With free and full liberty and authority to go and proceed to *Purchase of*
 upon and from the said wood land and ground through the *Timber.*
 usual road ways to and from the same respectively to fell and Liberty for
 cut down and lop top and cut or saw up and otherwise deal purchaser to
 with and to carry away the said trees at all reasonable and con- enter upon the
 venient times in or upon the said wood and land as usual and ground and cut
 customary in like cases until the day of the month of timber, &c. ;
 now next ensuing (b) And also at any time or times within the and also to dig
 space or time of months thereafter to dig and use saw-pits and use saw-
 and heap or stack up the said timber in or upon proper and pits.
 convenient parts of the said land or ground upon which the said
 timber is standing or growing without paying or making any
 compensation or satisfaction for the use thereof And the said
 (P.) in consideration of the premises Doth hereby agree with Purchaser
 the said (V.) that he the said (P.) shall and will pay unto the agrees to pay
 said (V.) the sum of £ sterling at the times and in the the purchase-
 manner following (that is to say) The sum of £ part thereof money by
 on or before the day of the further sum of £ instalments ;
 other part thereof on or before the day of &c.
 now next ensuing And also shall and will fell and cut down
 the said trees and every of them and remove and take away the
 same with the boughs lops tops and bark thereof out of and and will carry
 from off the said wood land or ground within the time or re- away the trees
 spective times hereinbefore limited or specified for that purpose within the
 and that any parts of the said trees boughs lops tops and time limited ;
 bark which shall not be so removed within such time or times
 as aforesaid shall thenceforth be forfeited to the said (V.)
 And also shall and will on or before the day of

(a) This will, in general, be a provision of much importance; as if the purchaser were allowed to dig up the roots, he would prevent all future increase from the site of the trees, which is often very abundant.

(b) If the vendor be tenant in tail only of the land, or tenant for life with power to fell timber, the following provision may be added on behalf of the purchaser, lest the vendor's interest in the land should cease before the timber shall have been felled or removed: "Provided always, that in case the said (V.) shall happen to depart this life on or before the said day of (the time within which the timber is to be felled) and his estate or interest in the said land or timber shall cease upon such his decease then and in such case there shall be abated or repaid as the case may require so much of the said purchase-money or sum of £ as shall be the value (to be determined by valuation in case of difference) of such number of trees as shall not have been felled at or preceding the time of his decease."

Tenant for life or in tail.

No. XCIII.
*Purchase of
 Timber.*

and also fill up
 saw-pits, &c.;
 and repair
 hedges, &c.;
 and will not
 disturb the soil.

next fill up and make good all such saw-pits and holes as shall have been made for any purpose aforesaid *And* amend and repair or replace all such hedges and fences as shall be destroyed broken or otherwise damaged in felling hewing or carrying away the said timber on being allowed by the said (V.) hedge and fence-wood for that purpose *And* moreover that he the said (P.) shall not nor will dig break up or disturb the ground or soil in upon or from which the said trees or any or either of them shall respectively grow or hew or fell the said trees or any of them lower or nearer the surface of the said soil or ground than inches thereof or damage or injure the roots of the same or the germs or buds thereof in anywise howsoever *In witness &c.*



Agreements following and referring to Conditions of Sale—see post, CONDITIONS OF SALE.



Agreements as to Shipping—see post, SHIPPING.



No. XCIV.

No. XCIV.
As to Title.

*Agreement for letting Purchaser into Possession before
 Acceptance of Title.*

Effect of taking
 possession.

Obs. As a rule, a purchaser by entering into possession before a conveyance is executed, is held to waive all objections to the title, *Fludger v. Cocker*, 12 Ves. 25, unless under special circumstances, as where he takes possession at the instance of the vendor, and on his assurance that the title is good, *Vancouver v. Bliss*, 11 Ves. 458. So, if possession is authorized by the contract to be taken before the title is made, that will not be deemed a waiver, *Stevens v. Guppy*, 3 Russ. 171. And if a purchaser wishes to have immediate possession, he may protect himself by a special clause, as in the following precedent.

Memorandum of an agreement &c. Whereas by a contract entered into the day of the said (Vendor) agreed to sell and the said (Purchaser) agreed to purchase certain freehold estates comprised in the schedule thereunder written Now these

Presents witness and it is hereby declared and agreed by and between the said parties that the said (P.) may be let into and take immediate possession of the said estates so contracted to be sold to him as aforesaid for his own benefit in as full and ample manner as if a conveyance of the same had been executed: Provided always that such (a) taking possession shall not be deemed to be an acceptance of the title or as an abandonment on the part of the said (P.) of his right to have all valid objections thereto fully removed and all defective evidence supplied at the expense of the said (T.) And the said (T.) doth hereby agree that he will forthwith proceed with the said contract and remove all valid objections to be made to the said title and supply all evidence which may be defective therein.

As witness our hands the day and year first above written.

A. B.

C. D.

No. XCV.

Agreement that certain Acts shall not be deemed a Waiver of an Agreement.

No. XCV.

Waiver of Agreement.

Articles &c. Between H. B. of &c. of the one part and D. B. of &c. of the other part *Whereas* on the day of now last past the said H. B. and D. B. did enter into an agreement of that date under their hands for the division of the lands comprised in the settlement of and touching several matters relating thereto *And whereas* part of the lands comprised in the said settlement and mentioned to be subject to the said agreement have been sold by the said H. B. to T. C. at or for the price or sum of £ and the sum of £ is to be allowed by the said H. B. to the said T. C. out of his said purchase-money on account of some objections taken to the title to the said lands *And whereas* the said D. B. has been requested to join in a conveyance of the lands so agreed to be sold to the said T. C. as aforesaid and has consented so to do upon having this agreement entered into between him and the said H. B. *Now these Presents witness* and it is hereby agreed and declared that the said D. B. shall not by executing the said intended conveyance be debarred or precluded from any benefit under the said intended agreement

Recital of agreement.

(a) As to the necessity of this provision, see *Observation, supra.*

No. XCV.
*Waiver of
 Agreement.*

of the said day of now last past or be held deemed construed or taken to have waived renounced or departed from the terms or stipulations of the said agreement *And* that on the contrary thereof the said agreement shall remain in full force and virtue and be binding on the said H. B. and D. B. notwithstanding the conveyance to be executed by the said D. B. as aforesaid *And* it is hereby also agreed and declared that under the terms of the said agreement the said H. B. shall notwithstanding the aforesaid abatement be considered to have received the full sum of £ from the produce of the said estate as and for the purchase of the lands sold and to be conveyed to T. C. aforesaid and that on the division of the residue of the said lands comprised in the said settlement the said H. B. shall be deemed and taken to have received lands to that amount in part of his share of the same *And* that in the allotment to be made to and for the said D. B. respect shall be had thereto and that in the first place and before any division between the said parties lands of equal value shall be allowed to him in lieu of the lands sold to the said T. C. and valued at the sum of £ as aforesaid.

In witness &c.



No. XCVI.
*Settling
 Litigations
 under Will.*

No. XCVI.

Agreement for settling Litigations and Questions arising under a Will.

Articles &c. Between M. W. of &c. of the one part and E. S. of &c. of the other part *Whereas* &c. (*recite the will &c.*) *Now these Presents witness* and the said M. W. doth hereby for herself her heirs executors and administrators covenant promise and agree to and with the said E. S. his heirs and assigns in manner following that is to say That she the said M. W. her heirs and assigns shall or will with all convenient speed release and convey the said messuages &c. unto and to the use of the said E. S. his heirs and assigns for ever free from all incumbrances whatsoever made done or committed by the said M. W. or any person or persons claiming or to claim by through or under her *And also* shall and will do all reasonable acts and deeds whatsoever for the putting the said E. S. into the quiet and peaceable enjoyment thereof *And also* shall and will deliver up to the said E. S. his heirs and assigns all title deeds writings and muniments whatsoever that relate to or concern the said premises *And these Pre-*

sents further witness and the said E. S. doth hereby for himself his heirs executors and administrators covenant promise &c. to and with the said M. W. that he the said E. S. his executors and administrators shall and will with all convenient speed assign and transfer all the personal estate of the said J. W. deceased and all the interest and estate of the said E. S. therein unto the said M. W. her executors administrators and assigns *And* shall and will if necessary permit and suffer the said M. W. her executors administrators or assigns to use his and their name or names in any action or actions suit or suits that shall or may be sued commenced or prosecuted against the said S. B. D. the executor as aforesaid or any other person or persons whomsoever to recover such personal estate or any part thereof *And also* shall and will do all reasonable acts deeds and things whatsoever for the putting the said M. W. in the actual possession and enjoyment of the said personal estate and every part thereof *And* it is hereby also agreed between the said parties hereto that at the time of executing the forementioned deeds and conveyances they the said E. S. and M. W. shall and will seal and deliver each one to the other mutual general releases of all claims and demands whatsoever from the beginning of the world to the day of the date of such release.

In witness &c.

No. XCVI.

*Settling
Litigations
under Will.*

ANNUITY.

- | | |
|---|---|
| 1. <i>Definition of an Annuity.</i> | 7. <i>Power of Distress.</i> |
| <i>Distinction between Annuity and</i> | 8. <i>Power of Entry.</i> |
| <i>Rent-charge.</i> | 9. <i>Warrant of Attorney, Bond, and</i> |
| 2. <i>How granted.</i> | <i>Covenant to pay.</i> |
| <i>By the words "Perceive" and</i> | 10. <i>Redemption of Annuity.</i> |
| <i>"Receive."</i> | 11. <i>Effect of making the Receipts of</i> |
| 3. <i>To whom granted.</i> | <i>Trustees valid Discharges.</i> |
| 4. <i>Apportionment of Annuity and</i> | 12. <i>Life Annuities and Rent-charges</i> |
| <i>Rent-charge.</i> | <i>do not affect Lands as to Pur-</i> |
| 5. <i>When an Annuity or Rent-charge</i> | <i>chasers, &c. until Memorandum</i> |
| <i>goes to the Heir.</i> | <i>left with Senior Master of</i> |
| 6. <i>When a Wife is bound by a Grant</i> | <i>the Court of Common Pleas.</i> |
| <i>by her Husband.</i> | 13. <i>Stamp.</i> |

SECT. 1. An annuity is a yearly payment of a certain sum of money granted to another for life or years, or in fee, charging the person of the grantor only, and so far partakes of the nature of real

<i>Annuity.</i>	<p>property, that when granted with words of inheritance, it is descendible, and goes to the heir to the exclusion of the executor, <i>Turner v. Turner</i>, Ambl. 782; <i>Stafford v. Buckley</i>, 2 Ves. sen. 179; <i>Aubin v. Dale</i>, 4 B. & Ald. 59; Co. Litt. 144 b. If a man seised of land grant a yearly rent, issuable out of the land, to another in fee-tail or for term of life, &c., with a clause of distress, this is a rent-charge. The principal difference between an annuity and a rent-charge is the remedy which the law gives for the recovery of the arrears. If an annuity issue out of land, as it now most commonly does, the grantee has his election to bring a writ of annuity, and, charging it upon the person, to make it personal, or to distrain upon the land so as to make it real, Co. Litt. 144 a. But he cannot have them both together, for if he recover by a writ of annuity, then the land is discharged of the distress; but if he distrain for the arrears, and avow the taking of the distress in a court of record, then is the land charged, and the person of the grantor discharged, Litt. s. 219. As few grants of annuities are without a covenant for payment expressed or implied, an action of covenant may be, and now mostly is, brought for the recovery of the arrears when a distress cannot be made. When the grantor of an annuity wishes his person to be discharged, and his land charged, a clause to that effect may be inserted in the deed, Litt. s. 220.</p>
Distinction between annuity and rent-charge.	
How granted.	<p>2. To make a good grant of an annuity, no particular technical mode of expression is necessary. If, therefore, a person intending to grant a rent-charge, do it in such a manner that it shall be void as a rent, it will be good as an annuity, for the words "to perceive" or "receive," is a sufficient charge on the person of the grantor, 1 Roll. Abr. 227; 2 Vin. Abr. 507, [E].</p>
By the words "perceive" and "receive."	
To whom granted.	<p>3. If a rent-charge be granted to a man and his heirs, he shall not have a writ of annuity against the heir of the grantor, although he has assets, unless the grant be for him and his heirs, Plowd. 457; Co. Litt. 144 b. But in the case of a corporation, which has a perpetual continuance, the successors will be bound, although not named, Harg. Co. Litt. 144, n. 2. Questions sometimes arise under wills, whether annuities are given in perpetuity or for lives only, <i>Mansergh v. Campbell</i>, 4 Jur. (N. S.) 1207; <i>Hedges v. Harpur</i>, Id. 1209.</p>
Apportionment of annuity and rent-charge.	<p>4. By the old law, if a man had a rent-charge to him and his heirs, issuing out of certain lands, and he purchased any parcel of those lands to him and his heirs, all the rent-charge became extinct, because it could not be apportioned, Litt. s. 222. So likewise an annuity, if it were not made chargeable on the person, before the purchase, Dyer, 140; Gilb. Rents, 152. So a rent-charge, not being apportionable, if it were made payable half-yearly or quarterly, and the annuitant died in the interval between the days of payment, nothing was due for the time he lived, unless by express stipulation, <i>Pearly v. Smith</i>, 3 Atk. 260. Whether an annuity chargeable on</p>

the person only, and not on the lands, were subject to the same rule, appears to have been doubtful, *Edwards v. Countess of Warwick*, 2 P. Wms. 176. The law of apportionment has since been altered by the 4 & 5 Will. 4, c. 22; but as it does not appear to have removed all doubts, it will be safer to insert the usual stipulation for the payment of the annuity for the intervening time that has elapsed between the last payment and the decease of the annuitant.

5. Annuities by way of rent-charge are frequently granted to a person and his *heirs* for a life or lives instead of being granted for *years*, determinable with the decease of a person or the decease of the survivor of several persons, when such an annuity is derived out of and depends on a freehold interest, the annuity will on intestacy be transmissible, and belong to the heirs and not to the executors or administrators. But every annuity granted out of a chattel interest will be a chattel interest, although it be limited to the grantee and his heirs for a life or lives, 1 Prest. Abst. 446. See *Atkinson v. Baker*, 4 T. R. 429. If a rent-charge be granted to a man during the life of another, and the grantee dies during the life of the *cestui que vie*, the right to the rent-charge vests in the personal representative of the grantee, *Bearpark v. Hutchinson*, 7 Bing. 178; 4 Moore & P. 848. Such an estate is also devisable by the grantee. *Ib.* See 7 Will. 4 & 1 Vict. c. 26, s. 6. When therefore it is the grantee's intention that an annuity or rent-charge, for the life of the grantor or the lives of nominees, should form part of his personal estate, it should be limited to him, his executors, administrators and assigns, for a term of years, if the grantor, nominee or nominees, or the survivor of them, should so long live. Such an express limitation, however, does not appear to be necessary in the grant of a personal annuity *pur autre vie*, because it is not a freehold, but only a chattel, *Savory v. Dyer*, Ambl. 139; 1 Dick. 162; nor in a grant of an annuity or rent-charge out of a term of years, for this is good for so many years as the term continues, and it is not determined by the death of the grantee, Cro. Eliz. 183; 7 Co. 25 a; 1 Roll. Abr. 831, pl. 3. A rent-charge for life as a freehold interest cannot in point of estate exist by force of a title under a term of years, 7 Co. 23, 24; 2 Prest. Abst. 2.

6. If a man be possessed of land for a term of years in the right of his wife, and grant a rent-charge and die, the wife shall avoid the charge, because she does not claim under her husband. But the husband's alienation of the term itself, or any part of it, binds the wife surviving, Hargr. Co. Lit. 184 a, n. 1; Butl. Co. Litt. 331 a, n. 1. See 1 Rep. on Husband and Wife, 173. Therefore where the husband charges an annuity on his wife's term for years, he should also absolutely assign the term upon trusts for securing the annuity.

Annuity.

When an annuity or rent-charge goes to the heir.

When a wife is bound by grant by her husband.

Power of distress.

7. By the 32 Hen. 8, c. 34, a power of distress is given to grantees

Annuity.

and assignees of reversions, their heirs, executors, successors and assigns; and by the 32 Hen. 8, c. 37, the same power is given to the executors and administrators of tenants in fee-simple, fee-tail, and for life: this power is extended by 4 Geo. 2, c. 28, to arrears of rent seck, rents of assize, and chief rents or quit rents. See 3 & 4 Will. 4, c. 42, s. 37.

Power of entry. 8. A power of entry, as well as a power of distress, is usually given to the grantee of an annuity, or rent-charge, or to his representatives, in default of payment for a certain number of days. If this be limited by way of use, it takes effect from the Statute of Uses; but if in a grant of rent, to be issuing out of certain lands, a proviso, condition or covenant be inserted, that if the rent be in arrear, the grantee may enter; in that case he or his assignee may enter by virtue of such proviso, Butl. Co. Litt. 203 a, n. 1, unless it be otherwise expressly stipulated. (As to the clauses of distress and entry in the case of copyholds, see GRANT OF AN ANNUITY SECURED ON COPYHOLDS.)

Warrant of attorney, bond, and covenant to pay. 9. In order to make the person of the grantor as well as his estate liable, it is usual to secure the payment of the annuity or rent-charge either by a warrant of attorney to confess judgment, or by a bond, or by a covenant to pay, very frequently by a bond or covenant, as well as a warrant of attorney; but where there is a covenant to pay, a bond does not add to the security, and is therefore a superfluous expense. When a warrant of attorney is taken, judgment ought to be entered up immediately, *Wild v. Sands*, 2 Stra. 7, 8; *Cowie v. Allaway*, 8 T. R. 257. But in order to obviate the consequences of any omission so to do, a provision is mostly inserted, dispensing with the necessity to revive judgment.

Redemption of annuity. 10. An annuity may be redeemable, but it is not necessarily so; and it is not redeemable, unless there be a special provision to that effect in the deed granting it, *Coverley v. Burrell*, 5 B. & Ald. 257; which ought in no case to be omitted, where it is intended by the parties that it should be redeemed.

Effect of making the receipts of trustees valid discharges. 11. In the grant of an annuity as in other cases, where a trust is raised by deed or will for sale of an estate, a clause that the receipts of trustees shall be sufficient discharges, is mostly inserted, and rarely ought to be omitted; as equity will in some cases bind purchasers to see the money applied according to the trust, if they be not expressly released by the authority of the trust, *Abbott v. Gibbs*, 1 Eq. Ab. 358; *Balfour v. Welland*, 16 Ves. 151.

Life annuities and rent-charges not to affect lands as to purchasers, &c., until memorandum left with senior master. 12. By stat. 17 & 18 Vict. c. 90, the stat. 53 Geo. 3, c. 141, requiring a memorial of annuity deeds to be enrolled was repealed, but transactions previous to the 10th August, 1854, are not affected by such repeal. The stat. 18 & 19 Vict. c. 15, s. 12, recites that by reason of the repeal of the act 53 Geo. 3, c. 141, requiring the enrolment of life annuities or rent-charges, purchasers were no longer

enabled to ascertain by search what life annuities or rent-charges may have been granted by their vendors or others, and then enacts:—Any annuity or rent-charge granted after the 26th April, 1855, otherwise than by marriage settlement for one or more life or lives, or for any term of years or greater estate, determinable on one or more life or lives, shall not affect any lands, tenements or hereditaments as to purchasers, mortgagees or creditors, unless and until a memorandum or minute containing the name and the usual or last known place of abode, and the title, trade or profession of the person whose estate is intended to be affected thereby, and the date of the deed, bond, instrument or assurance whereby the annuity or rent-charge is granted, and the annual sum or sums to be paid shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the particulars aforesaid in a book in alphabetical order by the name of the person whose estate is intended to be affected by the annuity or rent-charge, together with the year and the day of the month when every such memorandum or minute is so left with him, and he shall be entitled for every such entry to the sum of two shillings and sixpence, and all persons shall be at liberty to search the same book, together with the other books or registers in the office, on payment of the sum of one shilling. The registry of annuities or rent-charges given by will is not required, 18 & 19 Vict. c. 15, s. 14.

Annuity.

13. The grant of an annuity being a species of conveyance, an *ad valorem* stamp is required for an annuity deed by the 13 & 14 Vict. c. 97. (As to an agreement to grant an annuity and assignment of an annuity, see *the subsequent precedents*.)

No. XCVII.

Agreement to grant an Annuity.

Obs. 1. An agreement for the grant of an annuity is sometimes entered into for the purpose of completing the transaction at some future period, and may be entered into on the part of a feme covert, with respect to her independent property, *Essex v. Atkins*, 14 Ves. 542. Such an agreement need not be memorialized, as it was not within the 53 Geo. 3, c. 141; *Jackson v. Lever*, 3 B. C. C. 605; *Neill v. Smith*, 14 Ves. 491; but it was frequently required by way of precaution.

2. Specific performance of an agreement to grant an annuity, as a consideration for the purchase of an estate, will be enforced, although the vendor die previous to the completion of the contract, *Mortimer v. Capper*, 1 B. C. C. 156; *Jackson v. Lever*, 3 B. C. C. 605; *Paine v. Mellor*, 6 Ves. 352; *Coles v. Trecothick*, 9 Ves. 246; *Kenny v. Wexham*, 6 Madd. 355.

No. XCVII.

Agreement to grant Annuity.

A feme covert may enter into an agreement to grant an annuity.

Specific performance when enforced.

Articles &c. Between (*grantor*) of &c. of the one part and (*grantee*) of &c. of the other part *Witness* That the said (*grantor*)

Grantor agrees to grant an annuity.

No. XCVII. in consideration (a) of the sum of £ doth hereby agree to grant unto the said (grantee) an annuity or clear yearly sum of £ (b) during the life of the said (grantor) to be paid quarterly from the time of granting the same with a proportional part (c) up to and inclusive of the day of his death to be charged upon and issuing out of all those freehold messuages tenements and hereditaments of the said (grantor) situate at in the county of and to be further secured by the bond and warrant of attorney to confess judgment of the said (grantor) And the said (grantor) shall and will deliver unto the said (grantee) on or before the day of next a full and perfect abstract of the title of him the said (grantor) to the said messuages tenements and hereditaments (d) And also shall and will demise or convey by sufficient and proper conveyances the same hereditaments and premises unto a person or persons to be named by the said (grantee) in such manner and form and with such powers provisoes conditions covenants and agreements in the said deeds or instruments to be contained as are usual in like cases particularly a proviso enabling the said (grantor) to repurchase the said annuity on giving six calendar months' notice for that purpose and on paying all arrears &c. (e) And that the charges and the expenses attending the granting and securing the said annuity shall be borne by the said (grantor) And the said (grantee) in consideration of the premises doth hereby agree to pay unto the said (grantor) the sum of £ at the time of the execution of the said securities (or the sum of £ at the execution of &c. and the further sum of £ on the day of &c. as the case may be.)

Agreement to grant Annuity.

To secure payment by warrant of attorney.

To make out good title,

convey messuages, &c.,

and pay all expenses.

Grantor to pay the consideration money.

(a) If the purchase-money be not all paid at once, then say, "The sum of £ at the execution of the said securities and the further sum of £ within the space of calendar months next ensuing."

(b) Or, if it be so agreed, "during the life of the grantee," or "during the lives of nominees or the longest liver of them," or "for a term of years determinable on lives."

(c) As to the reason for this clause, see Pref. s. 4.

(d) If the annuity be secured on leasehold premises, and it be so agreed, say, "But the said (grantor) shall not be required to produce further evidence of his title to the said premises than the said lease and all deeds relating thereto." See *ante*, AGREEMENT TO GRANT A LEASE, s. 6, p. 98.

(e) If the annuity be granted during the life of the grantor, add, "Also a covenant that the said (grantor) shall at his own expense appear at any office in London or Westminster that his life may be insured." If necessary also add, "And also that the said (grantor) shall at his own expense insure such parts of the said premises as are liable to be damaged or destroyed by fire."

No. XCVIII.

No. XCVIII.

*Bond to secure the Payment of an Annuity to a former Mistress.**Bond to secure
Annuity.*

Obs. 1. It is a rule both of law and equity, that *ex turpi contractu actio non oritur*; any consideration, therefore, which is against the rules and claims of decency will vitiate the contract; but courts of law as well as those of equity distinguish between considerations past and considerations future, and consequently a bond purporting to be in consideration of past cohabitation between the obligor and the obligee has been held to be good, 2 Wils. 339; Ambl. 641; Forr. 153; 1 Fonbl. Eq. 228.

Illegality of
consideration
vitiates a bond.

2. A bond given as a collateral security for the payment of an annuity upon the original creation and sale thereof, where the same shall be granted or conveyed or secured by any other deed or instrument, is liable to and charged with the *ad valorem* duty imposed by law on conveyances upon the sale of any property: where such *ad valorem* duty shall not exceed 20s., such bond shall be chargeable with a stamp duty of equal amount with the said *ad valorem* duty; and where such *ad valorem* duty shall exceed 20s., such bond shall be chargeable with the duty of 20s. A bond given as the only or principal security for the payment of any annuity upon the original creation and sale thereof, the same *ad valorem* duty as on a conveyance in consideration of the sum or value given or agreed to be given for the purchase of such annuity. A bond given to secure an annuity without any valuable consideration is charged with a stamp duty of 1*l.*, where the annuity does not exceed 50*l.* per annum; 2*l.*, where the annuity exceeds 50*l.* and is under 100*l.*; and where the same exceeds 100*l.*, 2*l.* for every 100*l.* and fractional part of 100*l.*—13 & 14 Vict. c. 97, Sched. tit. Bond.

Stamp.

Know all Men by these presents &c. (see *BOND*.) *Whereas* by indenture bearing date the day of and made between the above bounden (*Obligor*) of the one part and the said (*Trustees*) of the other part certain hereditaments therein described situate lying and being &c. were demised and assured by the said (*O.*) to the said (*T.*) their executors administrators and assigns from the day of the decease of the said (*O.*) during the term of years without impeachment of waste *In trust* yearly and every year after the decease of the said (*O.*) during the life of H. H. therein named and described by the ways and means therein mentioned to raise and levy one annuity or yearly sum of £ free from all taxes and deductions whatsoever and to pay and apply the same by two half yearly payments on the day of and the day

Recital of
lease and re-
lease to secure
payment of an
annuity.

No. XCVIII. of in every year the first payment to be made on such of
Bond to secure the said days as should happen next after the decease of him the
Annuity. said (O.) into the proper hands of her the said H. H. whether
covert or sole or unto her order to be signed by any note or
writing from time to time after each of the said half-yearly
payments should have become due but not otherwise for her
sole and separate use benefit and disposal during her life inde-
pendent of any future husband *And* so that she might not
whether covert or sole at any time or times whatsoever make
any assignment or disposition by way of anticipation of the said
annuity of £ or any part thereof which should not actually
have accrued or become due to the intent that the same might
not be subject or liable to the debts of any future husband of the
said H. H. but always remain for her maintenance and support
And it was thereby declared that the receipt and receipts of the
said H. H. or of the person to whom she might appoint the said
annuity or any part thereof to be paid in manner aforesaid should
notwithstanding her coverture (if married) be a sufficient release
and discharge for the same or so much thereof as in such receipt
or receipts should be expressed to be received *And whereas* in
consideration of the past services of the said H. H. and from
motives of concern for her interest the said (O.) is desirous of
settling upon her an annuity of £ to commence imme-
diately in addition to the said annuity of £ secured to her
by the last in part recited indenture and for the purpose of carry-
ing the intention of the said (O.) into effect he hath executed the
above-written bond subject to the condition hereinafter contained
for making void the same *Now the condition* of the above-
written obligation is That if the above bounden (O.) shall and
do henceforth yearly and every year during the life of the said
H. H. well and truly pay unto the said (T.) or the survivor of
them or the executors or administrators of such survivor (in ad-
dition to the said annuity of £ secured by the said in part
recited indenture) one annuity or yearly sum of £ free
from all taxes and without any deduction whatsoever by equal
half-yearly payments on the day of and the
 day of in every year the first of such half-yearly
payments to be made on the day of next ensuing the
date of the above-written bond (a) to the intent that the same

Of grant of an
annuity.

Condition.

(a) If it be so agreed, add, "or if the said H. H. shall happen to die be-
between any of the said feasts or quarter days whereon the said annuity is made

may be applied by them the said (*T.*) and the survivor &c. Upon such trusts for the separate use of the said H. H. as in the said in part recited indenture are expressed concerning the said annuity of £ Then &c. (see *post*, BONDS.)

No. XCVIII.
*Bond to secure
Annuity.*

Bond for Payment of an Annuity—see *post*, BONDS.

No. XCIX.

Grant of an Annuity for the Life of the Grantor secured on Freeholds. (General Precedent.)

No. XCIX.
*Grant of
Annuity secured
on Freeholds.*

Obs. As to stamps required for this deed, see *ante*, Pref. s. 13.

Stamp.

This Indenture made the day of in the year of our Lord 18 Between (*grantor*) of &c. of the first part (*grantee*) of &c. of the second part (*trustee*) of &c. a trustee named and appointed by the said (*grantee*) for the purposes hereinafter mentioned of the third part and (*receiver*) of &c. of the fourth part *Whereas* the said (*grantor*) is seised of or entitled to the several messuages lands and hereditaments hereinafter particularly described for an estate of freehold during the term of his natural life *And whereas* the said (*grantee*) hath contracted with the said (*grantor*) for the absolute purchase of one annuity or clear yearly rent-charge or sum of £ during the life of the said (*grantor*, or *grantee*, or *nominees*, “or the survivor of them,” as the case may be) free from taxes and without any deduction whatever subject nevertheless to a proviso or agreement for the repurchase of the same hereinafter contained (*a*) *And whereas* for securing the payment of the said annuity or clear yearly sum of £ the said

Parties.

Recital of
scisin.

Of contract for
purchase.

Of warrant of
attorney.

payable to them respectively then if the said (*obligor*) his heirs &c. shall and do pay or cause to be paid unto the said (*T.*) or the survivor of them, his executors or administrators, a proportionate part of such annuity or yearly sum according to the time which the said H. H. may happen to live after the then last quarter's payment shall become due to the said H. H. without any deduction or abatement whatsoever.”

(*a*) If it be so agreed, say, “*And whereas* the said (*grantor*) by his bond or obligation in writing bearing even date with these presents hath become bound to the said (*grantee*) in the penal sum of £ with the condition

No. XCIX.

*Grant of,
secured on
Freeholds.*Of annuity to
be secured on
the freeholds.

Testatum.

Grant of an-
nuity.

Habendum.

(*grantor*) by his certain warrant of attorney bearing even date with these presents hath authorized A. B. and C. D. attorneys of her Majesty's Court of Queen's Bench to confess judgment against him in an action of debt for the sum of £ and costs of suit *And whereas* it was agreed upon the treaty for the purchase of the said annuity that for the further securing unto the said (*grantee*) his executors administrators and assigns payment of the said annuity or &c. of £ the same should be charged upon and issuing out of the said messuages or tenements lands and hereditaments *And* it was further agreed between them the said (*grantor*) and (*grantee*) that the costs and expenses attending the contract for the said annuity and for preparing and perfecting the securities for the same should be borne and paid by the said (*grantor*) *And* it was also agreed that the said (*receiver*) should be appointed receiver of the rents of the said hereditaments as hereinafter mentioned *Now this Indenture witnesseth* That in pursuance of the said in part recited agreement and in consideration of the sum of £ of lawful money of Great Britain to the said (*grantor*) in hand well and truly paid by the said (*grantee*) at or before the sealing and delivery of these presents the receipt whereof the said (*grantor*) doth hereby acknowledge and of and from the same and every part thereof doth acquit release and discharge the said (*grantee*) his executors and administrators by these presents He the said (*grantor*) *Doth* hereby give grant bargain and sell unto the said (*grantee*) his executors administrators and assigns during the natural life of the said (*grantor*) *One annuity* or clear yearly rent-charge or sum of £ to be issuing and payable out of and charged and chargeable upon *All that* messuage or tenements &c. *To have and to hold* receive perceive and take the said annuity or yearly rent-charge or sum of £ unto the said (*grantee*) his executors administrators and assigns henceforth during the natural life of the said (*grantor*) (*a*) to be paid and payable to him the said (*grantee*) his executors administrators and assigns at or in the

thereunder written for making void the same upon payment of the said annuity or yearly sum at the times and in manner hereinafter mentioned." As to the necessity of a bond, see *ante*, Pref. sect. 9.

(*a*) Or "of the said (*grantee*)," or "during the natural lives of the said (*nominees*) or during the life of the survivor of them," or "for and during the term of 99 years if the said (*grantor*) or if the said (*nominees*) or the survivor of them should so long live."

Common Dining-Hall of the Inner Temple in the county of Middlesex by four equal quarterly payments between the hours of &c. on the day of the day of the day of and the day of in every year free from all taxes and without any deduction or abatement whatsoever the first quarterly payment to be made on the day of now next ensuing (*a*) And in case the said (*grantee*) should die in the interval between any of the said quarterly days of payment then also a proportionate (*b*) part of the said annuity for the time which at the decease of the said (*grantor*) shall have elapsed for the quarterly payment then growing due such proportionate part to be paid within days after the decease of the said (*grantor*) And the said (*grantor*) for himself his heirs executors and administrators doth hereby covenant promise and agree with and to the said (*grantee*) his executors administrators and assigns That he the said (*grantor*) his heirs executors or administrators shall and will well and truly pay or cause to be paid unto him the said (*grantee*) his executors administrators or assigns the said annuity or yearly rent-charge or sum of £ during the life of him the said (*grantor*) at or upon the days and in the manner hereinbefore appointed for the payment thereof and also such proportionate part as aforesaid And the said (*grantor*) for himself his heirs executors administrators and assigns doth hereby grant covenant and agree with and to the said (*grantee*) his executors administrators and assigns That in case the said annuity or yearly rent-charge or sum of £ shall happen to be due and unpaid for the space of twenty-one days next after any of the said days or times hereinbefore appointed for the payment thereof Then and in every such case and so often as it shall happen it shall and may be lawful to and for the said (*grantee*) his executors administrators and assigns into and upon the said messuages tenements lands hereditaments and premises so charged with the payment of the said annuity or into or upon any part thereof to enter and distrain for the same annuity and all arrears thereof and to dispose according to law as landlords may for rent reserved upon leases for years of the distress and distresses then and there found to

No. XCIX.

*Grant of,
secured on
Freeholds.*

Covenant to
pay annuity.

Clause of dis-
tress.

(*a*) As to the necessity of this clause, see *ante*, Pref. sect. 3, and also APPORTIONMENT.

(*b*) Before the 4 & 5 Will. 4, c. 22, (see *post*, tit. APPORTIONMENT) this clause was absolutely necessary where it was intended that the annuity should be apportioned.

No. XCIX.

*Grant of,
secured on
Freeholds.*

Clause of entry.

the intent that thereby the said annuity or yearly &c. of £ and all arrears thereof shall be fully paid and satisfied together with all costs charges and expenses whatsoever sustained and occasioned by nonpayment or attending such distresses as aforesaid *And further* That in case the said annuity or any part thereof shall be behind or unpaid for the space of forty days next after any of the days or times hereinbefore appointed for the payment thereof [although no formal demand shall have been made thereof] Then and so often it shall and may be lawful to and for the said (*grantee*) his executors administrators and assigns into and upon the said premises or into or upon any part thereof in the name of the whole to enter and the same to have hold and enjoy and the rents and profits thereof and of every part thereof to receive and take to and for his and their own use and benefit until he or they shall be thereby and therewith or otherwise fully paid and satisfied the said annuity and the arrears due at the time of such entry and which shall afterwards accrue and grow due during such time as he the said (*grantee*) his executors administrators or assigns shall continue in possession of the said premises after such entry together with all costs damages and expenses occasioned by nonpayment thereof as aforesaid and all such costs and expenses as shall be incurred by the said (*grantee*) in keeping the said messuages tenements and hereditaments in good and tenantable repair (a) such possession when taken to be without impeachment of waste other than wilful and malicious waste (b) *And this Indenture further witnesseth* That in further pursuance of the said agreement and for the further securing the payment of the said annuity or clear yearly sum of £ he the said (*grantor*) at the request and by the direction of the said (*grantee*) [testified by his sealing and delivering of these presents] *Doth*

Further testimony.

(a) A rent-charge was secured on a house, with power, when in arrear, to enter and receive the rents until all arrears and costs, charges and expenses occasioned by the non-payment should be satisfied. The rent-charge being in arrear, the grantee entered, and, the house being greatly dilapidated and untenanted, he repaired and let it: it was held, that the question whether the grantee of the rent-charge was entitled to be allowed the monies expended by him in repairing the property was one to be determined at law; and that if he was not entitled thereto at law, neither was he in equity. *Hooper v. Cooke*, 20 Beav. 639; 1 Jur., N. S. 949; 25 Law J., Ch. 62; affirmed on appeal, 25 Law J., Ch. 467.

(b) If the grantor be tenant for life, add, "as far as the said (*grantor*) can grant that privilege."

hereby grant and demise unto the said (T.) his executors administrators and assigns *All those* the several messuages or tenements lands and hereditaments with the appurtenances hereinbefore mentioned and charged with the payment of the said annuity with all outhouses &c. (*general words*) *To have and to hold* the said messuages or tenements lands hereditaments and premises hereby granted and demised with the appurtenances unto the said (T.) his executors administrators and assigns from the day next before the day of the date of these presents for and during the term of ninety-nine years thence next ensuing and fully to be completed and ended without impeachment of waste if the said (*grantor*) shall so long live *Upon the trusts* nevertheless and to and for the ends intents and purposes hereinafter expressed and declared concerning the same that is to say *Upon trust* in the first place to permit and suffer the said (*grantor*) to receive and take the rents issues and profits of the said hereby demised premises with the appurtenances until default shall happen to be made in payment of the said annuity or some part thereof on or at the days and times and in manner hereinbefore appointed for payment of the same *And upon this further trust* That in case the said annuity or yearly sum of £ or any part thereof shall happen to be behind or unpaid by the space of forty days next after any of the said days or times of payment then and so often as the same shall happen the said (T.) his executors administrators or assigns do and shall by and out of the rents issues and profits of the said messuages and premises or any part thereof or by demising leasing mortgaging or selling the same premises or any part thereof for all or any part of the said term of ninety-nine years or by such other ways or means as the said (T.) his executors administrators or assigns shall seem meet raise and levy such sum or sums of money as shall be sufficient to pay and satisfy the said annuity or yearly rent-charge of £ or so much thereof as from time to time shall happen to be in arrear and unpaid together with all such losses costs charges damages and expenses as the said (*grantee*) and (T.) or either of them their or either of their executors administrators or assigns shall sustain or incur in consequence of the nonpayment of the same annuity or in the execution of the trusts hereinbefore declared *And* shall apply the monies arising thereby in or towards the payment or satisfaction thereof accordingly and the surplus of such monies (if any) to the said

No. XCIX.

*Grant of,
secured on
Freeholds.*

Demise of
lands to trustee
for 99 years.

Upon trusts.

To permit
grantor to take
the rents and
profits.

To raise arrears
by mortgage or
sale.

No. XCIX.

*Grant of,
secured on
Freeholds.*

Contracts, &c.
of trustee good
without consent
of grantor.

Indemnity to
trustees.

Receipts of
trustees to be
good dis-
charges.

(*grantor*) his executors administrators or assigns (*a*) *And* shall permit and suffer the said (*grantor*) and his assigns to receive the surplus (if any) of the rents issues and profits of the said messuages hereditaments and premises as aforesaid to and for his and their own use and benefit *And* for the purpose of facilitating any such sale or mortgage it is hereby declared and agreed by the parties to these presents that all contracts sales mortgages assignments and things which shall be entered into made and executed by the said (*T.*) his executors &c. of or concerning the said messuages or tenements and premises or any part thereof shall to all intents and purposes be as valid and effectual in the law as the same would have been if the said (*grantor*) had actually joined in and executed the same *Provided always* and it is hereby further declared and agreed by and between the parties hereto That the said (*T.*) his executors administrators or assigns or any of them shall not be answerable for any loss which may happen to the said premises in the execution of the trusts hereinbefore expressed unless the same shall happen through his or their own wilful default *And* that the receipt or receipts of him the said (*T.*) his executors &c. for any monies payable to him or them by virtue of these presents shall be a sufficient discharge (*b*) or discharges unto the person or persons paying the same and that the person or persons making such payments shall not be bound or liable to see to the application of such monies or be answerable or accountable for the loss misapplication or non-application thereof nor be obliged to inquire or ascertain whether such sales or mortgages shall be necessary for all or any of the purposes hereinbefore mentioned *Provided*

(*a*) If it be so agreed, say, “*And* from and after and subject to the payments aforesaid *Upon trust* to lay out and invest the residue and surplus of the monies which shall arise and be produced by such sale or sales in the name or names of him the said (*T.*) his &c. in the purchase of a competent share or competent shares of the parliamentary stocks or funds of Great Britain or at interest upon government securities to be from time to time altered varied and transposed in for and upon such funds or securities of the same or like nature as often as the said (*T.*) his heirs &c. shall think fit and to stand possessed of and interested in such stocks &c. upon the trusts following that is to say That the said (*T.*) his &c. shall during the life of the said (*grantor*) pay and satisfy unto the said (*grantee*) his executors &c. the said annuity or yearly &c. of &c. expressed to be hereby granted at the days and times and in manner hereinbefore appointed for payment thereof.”

(*b*) As to the effect of this clause, see Pref. sect. 11.

always that it is hereby further declared and agreed That when all the trusts hereinbefore declared concerning the said term of ninety-nine years shall in all things be fully satisfied and performed or shall have become unnecessary or incapable of being performed Then and thenceforth the said term or so much thereof as shall not be disposed of under the trusts aforesaid shall cease determine and be absolutely void And the said (*grantor*) for himself his heirs executors administrators and assigns doth hereby covenant promise and agree with and to the said (*grantee*) his executors &c. and as a separate covenant with the said (*T.*) his executors administrators and assigns in manner following that is to say That he the said (*grantor*) now at the time of the sealing and delivery of these presents hath in himself full power and absolute authority to charge all and singular the said messuages or tenements lands and hereditaments hereby charged and made chargeable with the payment of the said annuity or yearly sum of £ and also to demise the same with the appurtenances unto the said (*T.*) his executors administrators and assigns for the said term of ninety-nine years determinable as aforesaid upon the trusts and according to the true intent of these presents And also that the said premises shall and may during the same term determinable as aforesaid be peaceably and quietly holden and enjoyed as a security for the said annuity without any hindrance interruption claim or demand whatsoever from or by him the said (*grantor*) his executors administrators or assigns or any other person or persons whomsoever And that free and clear and freely and clearly acquitted exonerated and discharged by him the said (*grantor*) his executors and administrators of and from and against all and all manner of former estates rights charges and incumbrances whatsoever And further that he the said (*grantor*) his heirs executors and administrators and every other person having or lawfully or equitably claiming or who shall or may have or claim any estate right title trust and interest whatsoever either at law or in equity in to or out of the said hereditaments and premises hereby granted and demised and any part thereof shall and will from time to time and at all times hereafter during the continuance of this security upon every reasonable request of the said (*grantee*) his executors &c. but until such sale or mortgage shall be made at the costs and charges of the said (*grantor*) his heirs executors or administrators and after such sale or mortgage then at the costs and charges of the person

No. XCIX.

*Grant of,
secured on
Freeholds.*

Cesser of term.

Covenants.

Grantor has
power to charge
premises.

Free from in-
cumbrances.

No. XCIX.

*Grant of,
secured on
Freeholds.*And for further
assurance.That grantor
will appear at
insurance
office.And not leave
the kingdom
without giving
notice.Covenant to
insure build-
ings against
fire.

or persons requiring the same make do and execute all such further and other lawful and reasonable acts deeds matters and things whatsoever for the more effectually granting demising and assuring the said premises unto the said (T.) his executors &c. for and during the then remainder of the said term of ninety-nine years determinable as aforesaid *Upon* the trusts hereinbefore declared as by the said (*grantee*) his executors &c. or his or their counsel in the law shall be lawfully and reasonably advised or devised and required *And moreover* that the said (*grantor*) shall and will from time to time during the continuance of the said annuity at the request of the said (*grantee*) his executors &c. appear in person at office or any other office for life insurances within the cities of London and Westminster or send such notice in writing of his place of abode together with a certificate or certificates of the state of his health for the purpose of enabling the said (*grantee*) his executors &c. to insure or keep insured at the cost and charges of the said (*grantor*) his executors administrators or assigns any sum or sums of money not exceeding £ upon the life of him the said (*grantor*) *And further* that he the said (*grantor*) shall not nor will at any time hereafter during his life depart from or leave the kingdom or go or travel upon the seas or reside in foreign parts without giving every time sufficient notice in writing to the said (*grantee*) his executors &c. of his intention so to do in order to enable him the said (*grantee*) his executors &c. to make known the same if necessary at the said office so that the additional premium or premiums if any to be thereby incurred for the purpose of keeping on foot the said policy of insurance on the life of the said (*grantor*) may be paid *And also* that he the said (*grantor*) shall not nor will do any act or thing whatsoever whereby or by means whereof any policy or policies for effecting such insurance as aforesaid shall become void or voidable or otherwise prejudiced or impeached *And further* that he the said (*grantor*) shall and will during the continuance of the said annuity insure or cause to be insured against loss or damage by fire in one of the London or Westminster insurance offices the messuages buildings and erections hereby demised or intended so to be in the sum of £ at least and deliver over unto the said (*grantee*) his executors administrators or assigns the policy or policies to be obtained in respect of such insurance and the receipts and vouchers from time to time to be obtained for or in respect of the premiums and expenses of such insurance and that in case

the said (*grantor*) shall neglect so to do then it shall be lawful for but not obligatory upon the said (*grantee*) his executors administrators and assigns in the like manner to insure and continue insured the same when and so long during the continuance of the said annuity as he or they may think proper and in such sum or sums not exceeding the said sum of £ as he or they may think proper *And* that the monies to be advanced by the said (*grantee*) his executors administrators or assigns for the premiums and expenses of and for effecting and continuing such insurance shall be a charge upon the said messuages lands and hereditaments hereby demised or intended so to be and shall and may forthwith after the advancement thereof be raised and paid by all or any of the ways and means hereinbefore provided for the recovery payment and satisfaction of the said annuity *And* it is hereby agreed and declared between and by the parties to these presents that in the event of any damage or loss happening by fire to the said messuages buildings and erections or any part thereof the monies to be received in respect of the insurance thereof shall be laid out in rebuilding or repairing the premises so destroyed or damaged *And* the surplus if any of the last-mentioned monies shall be held upon the like trusts as are hereinbefore declared concerning the monies to be raised under the trusts of the said term of ninety-nine years determinable as aforesaid *Provided always* and it is hereby declared and agreed by and between the parties hereto That the said warrant of attorney and the judgment to be entered up by virtue thereof are intended only as a collateral security for the payment of the said annuity or yearly &c. on or at the several days and in the manner hereinbefore appointed for payment thereof as aforesaid *And* that no execution or executions shall be issued or taken out upon the said judgment unless and until some payment of the said annuity shall be in arrear for the space of twenty-one days next after some or one of the said days hereinbefore appointed for payment thereof as aforesaid *Provided* nevertheless that when and so often as the said annuity shall be so in arrear then and in such case it shall be lawful for the said (*grantee*) his executors &c. to sue out such execution for recovering all or any part of the said annuity and all costs and charges, which the said (*grantee*) his executors &c. shall bear pay sustain or be put unto by reason of the non-payment of the same *Provided always* and it is hereby declared and agreed between and by the said (*grantee*) and (*grantor*) that

No. XCIX.

*Grant of,
secured on
Freeholds.*

Warrant of
attorney in-
tended only as
collateral se-
curity.

No. XCIX.

*Grant of,
secured on
Freeholds.*

after the decease of the said (*grantor*) and full payment to the said (*grantee*) his executors administrators or assigns of the said annuity yearly rent or sum of £ and all arrears thereof up to the day of the decease of the said (*grantor*) and of all such costs charges and expenses as aforesaid the said (*grantee*) his executors administrators or assigns shall at the request costs and charges of the heirs executors or administrators of the said (*grantor*) acknowledge satisfaction upon the said judgment on the record thereof in due form of law or do any further or other reasonable acts matters or things that may then be required in regard thereto so that for the doing thereof he the said (*grantee*) his executors administrators or assigns be not compelled or compellable to travel from his her or their place or places of abode And it is hereby declared and agreed by and between the parties to these presents and particularly the said (*grantee*) for himself his heirs executors and administrators doth hereby covenant promise and agree with and to the said (*grantor*) his heirs executors administrators and assigns That in case the said (*grantor*) or his assigns at any time after the expiration of years from the date hereof be desirous of (*a*) purchasing the said annuity or yearly rent-charge or sum of £ and of such his or their desire shall give unto the said (*grantee*) his executors administrators or assigns six calendar months' notice in writing under his hand or in lieu of such notice shall pay in advance one half-year's payment of the same annuity Then and in such case from and immediately after the expiration of such notice or upon such payment in lieu thereof and upon payment by him the said (*grantor*) his executors &c. of the sum of £ for the repurchase of the same annuity together with all arrears and other sums which shall be then due for in respect of the same he the said (*grantee*) his executors &c. shall and will at the request costs &c. of the said (*grantor*) his executors &c. assign release and surrender or otherwise dispose of the said annuity or yearly &c. and all the then subsisting securities for the same and also all and singular the hereditaments and premises hereby made chargeable with the payment thereof for the residue then remaining and unexpired of the said term of ninety-nine years or so much thereof as shall not have been disposed of under or by virtue of the trusts hereinbefore expressed and shall acknowledge or cause satisfaction to be acknowledged on record of the said judgment [if any] And

Power to re-
purchase.

The grantee
will assign an-
nuity, &c.

(a) As to the necessity of this clause, see *ante*, Pref. sect. 10.

also at the like request costs and charges of the said (*grantor*) his executors &c. assign unto the said (*grantor*) his executors &c. the benefit of any policy of insurance^(a) which may have been effected by the said (*grantee*) his executors &c. and which shall be then subsisting and in force or capable of being kept on foot or renewed in such manner and form as he the said (*grantor*) his executors &c. or his or their counsel in the law shall reasonably require *And this Indenture further witnesseth* No. XCIX.
*Grant of,
secured on
Freeholds.*
Testatum.
 That in pursuance of the said agreement in this behalf he the said (*grantor*) and (*trustee*) by the direction and on the nomination of the said (*grantee*) testified by his executing these presents doth by these presents constitute and appoint the said (*receiver*) receiver agent and attorney from time to time in the names of the said (*grantor*) and (*trustee*) or in the name of either of them or otherwise during the said term of ninety-nine years determinable as aforesaid to ask demand collect and receive all and every the rents and profits of all and singular the said messuages lands hereditaments and premises hereinbefore granted and demised or intended so to be with their appurtenances of and from the present and future tenants and occupiers thereof respectively as and when the same shall from time to time become due and payable *And* in case of non-payment thereof to take and use such lawful remedies for recovering and obtaining payment of the said rents and profits or any part thereof by action suit distress or otherwise as shall be thought necessary *And* further to do perform and execute all other matters and things needful and requisite for collecting and receiving the said rents and profits as fully and effectually to all intents and purposes whatsoever as he the said (*grantor*) could or might himself do *And* the said (*grantor*) and (*trustee*) do and each of them doth hereby order and direct the present and future tenants and occupiers of the said messuages lands tenements hereditaments and premises and all other persons from whom the same shall be due and payable to pay the same unto the said (*receiver*) for the purposes hereinafter mentioned *And* do and each of them doth hereby declare that his receipts shall be good and sufficient discharges to such tenants or occupiers and other Appointment
of receiver of
rents.
Power of action,
distress, &c.
Direction to
tenants to pay
rents to re-
ceiver.

(a) Where the grantee of an annuity insured the lives for which the annuity was granted, without there being any stipulation on the subject between him and the grantor, it was held, that the latter, on redeeming, had no right to have the policy delivered to him. *Ex-parte Lancaster*, 4 De G. & S. 524. See *Law v. Warren*, 1 Drury, 31.

No. XCIX.
Grant of,
secured on
Freeholds.

Declaration
that receiver
shall, out of
rents,

pay all taxes,
&c.

pay annuity
to grantee,

and surplus
rents to grantor.

Covenant by
receiver to ap-
ply rents ac-
cordingly.

persons for such rents and profits as they shall respectively pay to him *And* it is hereby agreed and declared between and by all the said parties to these presents that all and every the rents and profits which shall be so received by the said (*receiver*) as aforesaid shall be held upon and for the trusts intents and purposes hereinafter mentioned that is to say *Upon trust* that he the said (*receiver*) shall from time to time out of the rents and profits of the said messuages lands tenements hereditaments and premises which he shall receive by virtue of these presents in the first place pay all taxes rates assessments and impositions whatsoever taxed charged assessed or imposed on the said messuages lands tenements hereditaments and premises or any of them and which the respective tenants and occupiers shall not be liable to pay *And* in the next place pay and discharge all such costs and expenses as shall be incurred or sustained in keeping the said messuages and premises and every part thereof in good and tenantable repair *And* in the next place pay all such premium or premiums or sum or sums of money as shall be necessary for the purpose of keeping the said messuages and premises insured against fire in some reputable insurance office in London or Westminster in the sum of £ at least and for effecting or renewing from time to time the insurance of the same premises to such amount as aforesaid *And* in the next place to deduct and retain for his own use so much or such sums of money not exceeding the rate of £ for every £100 received and as shall be a reasonable compensation for his care trouble and expense in receiving and paying the said rents and profits in manner and for the purposes herein mentioned *And* in the next place pay or cause to be paid to the said (*grantee*) his executors administrators and assigns the said annuity or yearly sum of £ and all costs charges and expenses as aforesaid *And lastly* pay or cause to be paid unto the said (*grantor*) and his assigns or to such person or persons as he or they shall order or direct all the clear residue and surplus of the rents and profits of the said messuages lands tenements hereditaments and premises which shall from time to time remain after answering the purposes aforesaid *And* the said (*receiver*) doth hereby for himself his heirs executors and administrators covenant promise and agree to and with the said (*grantor*) his executors administrators and assigns and as a separate covenant with the said (*trustee*) his executors administrators and assigns in manner following (that is to say) that he the

said (*receiver*) shall and will from time to time so long as he shall continue and be the collector or receiver of the rents and profits of the said messuages lands tenements hereditaments and premises in manner aforesaid use his utmost endeavours faithfully to collect and receive the same And that he the said (*receiver*) shall and will during such time and so long as he shall continue and be the collector and receiver of the rents and profits as aforesaid duly and punctually pay or cause to be paid in manner and to and for the ends intents and purposes aforesaid all such sum and sums of money as shall be collected or received by him the said (*receiver*) by virtue of or under the aforesaid power or authority And the said (*grantor*) doth hereby for himself his heirs executors and administrators covenant and agree with the said (*grantee*) his executors administrators and assigns in manner following (that is to say) that he the said (*grantor*) shall not nor will without the consent of the said (*grantee*) his executors administrators or assigns first had and obtained in writing signed with his or their hand or hands revoke the powers or authorities hereby given to the said (*receiver*) or any of them or do or suffer to be done any act matter or thing whereby the said powers or authorities hereby given or any of them may and shall become void and of no effect or hinder and obstruct the said (*receiver*) or any future receivers to be appointed as hereinafter is mentioned in recovering collecting or receiving all or any of the rents and profits of the said messuages lands tenements hereditaments and premises upon and for the trusts and purposes aforesaid during such time as the said annuity or yearly sum of £ shall remain and continue on the security of these presents And further that in case the said (*receiver*) shall by death or other disability be disqualified or rendered incapable to collect and receive the rents and profits of the said messuages lands tenements hereditaments and premises or shall refuse or neglect to proceed therein in manner aforesaid or shall otherwise misbehave himself in the trusts hereby in him reposed whilst the said annuity or yearly sum of £ shall remain and continue on the security of these presents then and in any of the said cases the said (*grantor*) and his assigns shall and will join with the said (*trustee*) or other the trustees or trustee for the time being of these presents in removing the said (*receiver*) if then living from the said employment and shall and will in any of the cases aforesaid duly constitute appoint and authorize such other fit person or persons in the place and stead of the said (*receiver*) as

No. XCIX.

*Grant of,
secured on
Freeholds.*

Covenant by
grantor not to
revoke power.

To join in ap-
pointing new
receiver.

No. XCIX.

*Grant of,
secured on
Freeholds.*

the said (*grantee*) his executors administrators or assigns shall from time to time nominate direct or appoint to collect receive and pay the rents and profits of the said messuages lands tenements hereditaments and premises upon and for the trusts and purposes hereinbefore mentioned and so from time to time when and as often as the like case shall happen so long as the said annuity or yearly sum of £ shall remain on the security

of these presents *And* in case the said (*grantor*) or his assigns shall refuse or neglect so to do for the space of twenty days next after the death incapacity or misbehaviour of the said (*receiver*) or any other receiver so be constituted and appointed as aforesaid that then and in such case and so from time to time as often as the like case shall happen it shall and may be lawful to and for the said (*grantee*) his executors administrators or assigns without the consent or concurrence of the said (*grantor*) or his assigns to constitute and appoint some fit person to collect receive and pay the said rents and profits upon the trusts and for the purposes aforesaid with such salary for his care pains trouble and expenses as the said (*grantee*) his executors administrators or assigns shall think fit not exceeding in the whole the annual sum of £ *Provided always* and it is hereby

declared and agreed that the said (*grantee*) his executors administrators or assigns shall not in any case be charged with or accountable for any loss or misapplication of the rents and profits of the said messuages lands tenements hereditaments and premises or any part thereof by reason of any default neglect or breach of trust in the said (*receiver*) or any future collector or receiver so to be appointed as aforesaid but that such loss or misapplication shall be wholly borne by the said (*grantor*) or his assigns *Provided always* and it is hereby agreed and declared that the said (*receiver*) or any receiver so to be appointed as hereinbefore is mentioned shall not in anywise exercise the powers or authorities hereinbefore mentioned or any of them until one half-yearly (or quarterly) payment of the said annuity or yearly rent-charge of pounds shall be in arrear for the space of thirty days or more next after the same shall become payable anything hereinbefore contained to the contrary thereof in anywise notwithstanding [*Provided always* and it is hereby

declared and agreed by and between the said parties to these presents that the powers and authorities hereinbefore given to the said (*receiver*) or to be given to any such future receiver as hereinbefore is mentioned shall not prevent or be construed to

Grantee not to
be answerable
for receiver.

Receiver not
to act until an-
nuity be in
arrear thirty
days.

Proviso that
appointment of
receiver shall
not prevent
grantee from
exercising any
of his remedies,

restrain the said (*grantee*) his executors administrators or assigns from suing for recovering or compelling payment of the said annuity or yearly rent-charge of pounds or any part thereof or from using or exercising all or any of the powers or remedies hereinbefore given limited or reserved to him or them for enforcing such payment or for obtaining possession of the said messuages tenements lands and premises so charged therewith as aforesaid or any part thereof *And also* shall not prevent nor be construed to restrain the said (*trustee*) his executors administrators or assigns from executing or exercising all or any of the trusts powers or authorities hereinbefore reposed given limited or reserved to him or them] *In witness &c.*

No. XCIX.

*Grant of,
secured on
Freeholds.*

nor trustee
from executing
the trusts.

GRANTS OF ANNUITIES SECURED ON COPYHOLDS.

- | | |
|---|---|
| 1. <i>Grant by Surrender.</i> | 3. <i>Warrant of Attorney a Security.</i> |
| 2. <i>Estates of Surrenderor and Surrenderee until Admission.</i> | |

SECT. 1. Where an annuity is to be secured on copyholds, it is usual either to covenant to make a surrender, or, which is the safer course, to make a previous surrender on condition, with a deed of grant, containing the usual covenants. A demise to a trustee is not commonly made, as no term can be granted without the licence of the lord for longer than one year.

Grant by surrender.

2. Where an actual surrender is made, the surrenderor remains tenant to the lord until admission, insomuch, that prior to the 55 Geo. 3, c. 192, see 7 Will. 4 & 1 Vict. c. 26, the surrenderor could not, after such surrender, devise the copyholds without a previous surrender to his will, *Kenebel v. Scrafton*, 8 Ves. 30; *Doe v. Wroot*, 5 E. 130; Coote, Morg. 111. So likewise a surrenderee, not being tenant until admittance, cannot in the meantime pass the lands, although he may make an equitable transfer of them, *Doe v. Tofield*, 11 E. 246; nor recover actual possession of the premises on default; but the surrenderor being considered in equity as trustee for the surrenderee, *Holdfast v. Clapham*, 1 T. R. 600, it is not usual for him to be admitted until default, in order to avoid the fees for admission and performance of the customary services.

Estate of surrenderor and surrenderee until admittance.

3. Formerly a judgment would not attach upon copyholds, although it would bind the goods of the copyholder, and give priority, as in

Warrant of attorney a security.

*Secured on
Copyholds.*

Copyholds liable to execution on judgment.

other cases, 2 Eq. Ca. Ab. 222. By 1 & 2 Vict. c. 110, s. 11, under the writ of elegit, may be taken all lands and hereditaments, including lands and hereditaments of copyhold or customary tenure, of which the person against whom execution is sued, or any person in trust for him, shall have been seised or possessed of at the time of entering up judgment, or at any time afterwards, or over which such person shall at the time of entering up such judgment, or at any time afterwards have any disposing power which he might, without the assent of any other person, exercise for his own benefit, provided always that such party suing out execution, and to whom any copyhold or customary lands shall be so delivered in execution shall be liable to make, perform and render to the lord of the manor, or other person entitled, all such and the like payments and services as the person against whom such execution shall be issued would have been bound to make, perform and render, in case such execution had not issued, and that the party so suing out such execution, and to whom any such copyhold or customary lands shall have been so delivered in execution shall be entitled to hold the same until the amount of such payments, and the value of such services, as well as the amount of the judgment, shall have been levied.



No. C.

*Secured on
Copyholds.*

No. C.

Grant of an Annuity for the Life of the Grantee secured on Copyholds.

This Indenture &c. (as in the last precedent) Between (grantor) of &c. of the one part and (grantee) of &c. of the other part Whereas &c. (recite seisin of grantor, also contract for purchase of an annuity and warrant of attorney, as in the last precedent) (a)

Where surrender is previously made.

(a) Where a surrender has been previously made, say, “*And whereas at a special court-baron held in and for the manor of in the county of the said (grantor) hath surrendered by the rod into the hands of the lord of the said manor on the day of the date of these presents (or, if out of court, to two customary tenants, “by the hands and acceptance of (copyholders) two of the customary tenants of the said manor”) according to the custom of the said manor All those &c. (parcels) To the end and intent that the said (grantee) his heirs or assigns shall or lawfully may be admitted tenant thereto to be holden at the will of the lord according to the custom of the manor subject to the rents and services in respect thereof on condition that if the said (grantor) his heirs executors or administrators shall well and truly pay or cause to be paid unto the said (grantee) his heirs or assigns for and during the natural life of the said (grantee) or his assigns one annuity or yearly sum of £ and also a proportional part of the said annuity free from taxes on*

Now &c. in consideration of &c. to the said (*grantor*) in hand &c. by the said (*grantee*) at &c. paid the receipt whereof &c. *He* the said (*grantor*) doth give and grant unto the said (*grantee*) and his assigns during the natural life of the said (*grantee*) *One Annuity* or &c. to be issuing out of &c. *All those &c. To Have and to Hold* &c. *And* the said (*grantor*) for himself &c. doth covenant to pay &c. *And (a) this Indenture further witnesseth* That for the further &c. securing the payment of the said annuity &c. of £ at or upon the days &c. as aforesaid *He* the said (*grantor*) doth hereby for himself his heirs executors administrators and assigns covenant &c. with &c. (*grantee*) and his assigns that he the said (*grantor*) his heirs or assigns at or before the next general court which shall be holden in the said manor of shall and will surrender into the hands of the lord or lady of the said manor of according to the custom of the said manor *All those &c. with the appurtenances* hereinbefore mentioned *To the end and intent* that the said (*grantee*) or his assigns shall or lawfully may be admitted thereto to be holden at the will of the lord according to the custom of the said manor and subject to the rents and services in respect thereof *on condition* nevertheless that if the said (*grantor*) his heirs executors administrators or assigns shall well and truly pay the said annuity &c. unto &c. (*grantee*) and his assigns during the natural life of him the said (*grantee*) and also shall pay unto the executors administrators or assigns of the said (*grantee*) so much of the said annuity as shall be due at the decease of the said (*grantee*) or in case of a repurchase of the said annuity in pursuance of the proviso hereinafter contained in that behalf Then and in either such case the surrender hereinbefore covenanted to be made shall be and become absolutely void to all intents and purposes whatsoever *And* in case the said (*grantee*) or his assigns shall have been admitted to the said premises or any part thereof he and they shall thenceforth stand

No. C.

Secured on
Copyholds.

Testatum.

Habendum.

Further testa-
tum.Condition to
make void.Declaration of
trusts.

the days and in the manner hereinafter particularly mentioned or if the said (*grantor*) his executors administrators or assigns should repurchase the said annuity upon the terms hereinafter mentioned *Then* and in either of the said cases the said surrender shall be void to all intents and purposes whatsoever."

(a) Where a surrender has been previously made, omit this further testatum, and proceed, "And it is hereby declared and agreed That in case the said (*grantee*) or his assigns shall have been admitted to the said premises or any part thereof he and they shall then thenceforth stand seised and possessed of the same Upon &c." See next page.

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Copyholds.

seised or possessed of the same *Upon* the trusts and to and for the ends intents and purposes and with under and subject to the powers provisoes declarations and agreements herein-after expressed and declared concerning the same that is to say *Upon Trust* that he the said (*grantee*) and his assigns shall and may by and out of the rents issues and profits thereof or any part thereof or by sale or mortgage thereof or by all or any one or more of the said ways and means at his discretion raise and levy such sum and sums as he or they shall deem sufficient to pay and satisfy so much of the said annuity &c. as shall be then due and in arrear together with all costs charges damages and expenses as shall have been sustained and expended *And upon this further Trust* to place out and invest the residue or surplus of the money to arise by such sale or mortgage and the produce of the said hereditaments and premises at interest in the name or names of the said (*grantee*) or his assigns *And* it is hereby declared and agreed by and between the parties to these presents That the said (*grantee*) his executors administrators or assigns shall stand possessed of and interested in the monies to be placed out and invested *Upon Trust* by and out of the interest dividends and proceeds thereof and in case the same shall be insufficient then by selling and disposing of the principal or capital of the said stocks funds or securities and therewith to retain and pay to himself the said (*grantee*) his executors administrators and assigns so much of the said annuity or yearly &c. as shall from time to time become due and payable together with all reasonable costs charges and expenses incurred in respect thereof *And* from and after full payment and satisfaction thereof then in trust to pay and apply the residue and surplus of the dividends and interest thereof or of so much of the principal as shall not have been applied for the purposes aforesaid unto the said (*grantor*) his executors administrators and assigns *Provided always* and it is hereby declared &c. that from and after the decease of the said (*grantee*) and full payment unto the executors administrators or assigns of the said (*grantee*) of the said annuity and such proportional part as aforesaid and all costs charges damages and expenses as aforesaid then the said several pieces and parcels of land and hereditaments hereby covenanted to be surrendered or so much thereof as shall not be disposed of under the trusts hereinbefore declared shall be held *In Trust* for the said (*grantor*) his heirs and assigns to be surrendered or otherwise assured as he or they shall direct or appoint *And further* that all contracts sales

After decease
of grantee and
payment of
annuity, that
the premises
shall be held
in trust for the
grantor.

&c. *And also* that the said (*grantee*) his executors administrators and assigns or one of them shall not be answerable &c. And that the receipt or receipts &c. (See *post*, p. 208.) And the said (*grantor*) doth hereby for himself &c. (*Covenants for title*, §c., *post*, pp. 208, 209.) *Provided always* (*Clause for repurchase*, *ante*, p. 196; *post*, pp. 211, 221.)

No. C.
Secured on
Copyholds.

No. CI.

Grant of an Annuity by a Copyholder seised for an Estate for Life carved out of the Inheritance (a).

No. CI.
Secured on
Copyholds.

This Indenture made the day of &c., between A. B. of &c. of the first part C. D. of &c. of the second part and E. F. of &c. of the third part *Whereas* the said A. B. is seised of the lands and hereditaments hereinafter described for an estate for the term of his life according to the custom of the manor of in the county of *And whereas* the said A. B. hath contracted and agreed with the said C. D. for the sale to him of an annuity or clear yearly sum of £ of lawful money &c. to be paid to the said C. D. his executors administrators and assigns for and during the natural life of the said A. B. and up to the day of his decease at or for the price or sum of £ the said annuity to be secured upon and out of the said customary or copyhold lands and hereditaments in such manner as hereinafter is mentioned and to be further secured by the covenant of the said A. B. hereinafter contained and by the warrant of attorney of the said A. B. hereinafter recited and a judgment to be thereupon entered up as hereinafter mentioned *And whereas* upon the treaty for the sale of the said annuity it was stipulated that the same should be repurchasable upon the terms hereinafter expressed and that the costs and expenses attending the examination of the title to the said estate and of preparing and perfecting the securities for the same annuity should be borne and paid by the said A. B. *And whereas* the said A. B. in pursuance of the said agreement in that behalf hath executed a certain deed poll or warrant of attorney bearing even date with these presents authorizing G. H. and I. K. attorneys of her Majesty's Court of Queen's Bench at Westminster jointly and severally or any other attorney of the same court as of

Recitals.

Contract for
sale of annuity.

Payment of
costs.

Warrant of
attorney.

(a) See *Scriv. on Copyholds*, pp. 885—891.

No. CI. <i>Secured on Copyholds.</i>	term now last past term next ensuing or any subsequent
	term to appear for him the said A. B. in the said court in an action of debt for the sum of £ for money borrowed at the suit of the said A. B. and thereupon to confess judgment by <i>nihil dicit</i> or otherwise for that sum together with costs of suit
Testatum.	<i>Now this Indenture</i> witnesseth that in pursuance and further performance of the said recited contract or agreement and for and in consideration of the sum of £ of lawful money of Great Britain unto the said A. B. in hand well and truly paid by the said C. D. upon the execution of these presents the receipt of which said sum of £ the said A. B. doth hereby acknowledge and from the same and every part thereof doth acquit release and discharge the said C. D. his heirs executors administrators and assigns for ever by these presents he the said A. B. for himself his heirs executors and administrators doth hereby covenant and agree with the said C. D. his executors administrators and assigns that he the said A. B. shall and will well and truly pay or cause to be paid unto the said C. D. his executors administrators or assigns for and during the natural life of the said A. B. an annuity or yearly sum of £ of lawful money aforesaid by four equal quarterly payments on the several days following that is to say the day of the day of the day of and the day of the said annuity to be paid at the entrance of the common dining hall of the Inner Temple London between the hours of ten and eleven in the forenoon free and clear of and from all taxes and deductions whatsoever parliamentary or otherwise and the first quarterly payment thereof to be made on the day of now next ensuing <i>And also</i> that the heirs executors or administrators of the said A. B. shall and will within one calendar month next after his decease well and truly pay or cause to be paid to the said C. D. his executors administrators or assigns a proportional part of the said annuity from the quarterly day of payment next preceding the decease of the said A. B. or from the day of the date of these presents if he shall happen to die before the first quarterly payment shall become due up to and until the day of his death <i>And this Indenture</i> also witnesseth that in further pursuance and performance of the said recited contract or agreement and for the consideration hereinbefore mentioned and also in consideration of the sum of 10s. of lawful money aforesaid unto the said A. B. in hand paid by the said E. F. at or
Covenant to pay annuity.	
Covenant to surrender copyholds.	

before the execution hereof the receipt whereof is hereby acknowledged he the said A. B. for himself his heirs executors and administrators at the request and by the direction of the said C. D. (testified by his sealing and delivering these presents) doth hereby covenant and agree with the said E. F. his heirs and assigns that he the said A. B. shall and will at his own costs and charges at the next or some subsequent general court baron or customary court to be holden for the manor of aforesaid or at any time hereafter out of court upon the request of the said C. D. his executors administrators or assigns or of the said E. F. his heirs or assigns well and effectually surrender or cause to be surrendered into the hands of the lord or lady lords or ladies of the said manor for the time being and according to the custom of the same manor all &c. with their appurtenances and the reversion &c. and all the estate &c. to the use of the said E. F. his heirs and assigns during the life of the said A. B. according to the custom of the said manor of *Upon* and for the trusts intents and purposes hereinafter expressed and declared concerning the same premises that is to say upon trust that the said E. F. his heirs and assigns do and shall pay the rents issues and profits of the said customary or copyhold hereditaments and premises unto the said A. B. and his assigns or otherwise permit and suffer him and them to receive and take the same in the mean time and until some default shall be made in payment of the said annuity or yearly sum of £ hereby intended to be secured or some part thereof at or on the days or times and in the manner hereinbefore limited and appointed for payment of the same *And* upon further trust that in case the said annuity or yearly sum or any part thereof shall happen to be behind and unpaid by the space of twenty-one days next over or after any of the said days whereon the same is so appointed and ought to be paid as aforesaid (being lawfully demanded) then and so often the said E. F. his heirs or assigns shall from time to time by and out of the rents and profits of the aforesaid hereditaments and premises and if necessary by making distresses upon or bringing actions against all or any of the tenants or occupiers of the same premises for recovery of the same rents and profits or by mortgage or absolute sale (such sale or sales to be either by public auction or private contract) of all or any part or parts of the said lands hereditaments and premises for all or any part of the estate for life therein of the said A. B. or by such other ways and means

No. CI.

*Secured on
Copyholds.*

Rents to be received by grantor until default in payment.

Trusts for securing annuity.

No. CI.
*Secured on
 Copyholds.*

Trustee's re-
 cepts to be
 good dis-
 charges.

Indemnity of
 trustee.

Covenants for
 title.

as to the said E. F. his heirs and assigns shall seem meet raise and levy such sum and sums of money as will be sufficient to pay and satisfy the said annuity or yearly sum of £ or so much thereof as shall from time to time be in arrear and unpaid and also all such costs charges and expenses as the said C. D. his executors administrators or assigns or the said E. F. his heirs or assigns shall pay sustain or be put unto by reason of the non-payment of the said annuity or yearly sum at or on the days and in the manner hereinbefore appointed for payment thereof or the performance of the trusts hereby created and do and shall pay and apply the monies so to be levied and raised in or towards payment or satisfaction of the said annuity and all such costs charges and expenses as aforesaid accordingly and shall and do pay the residue and surplus of the monies so to be levied or raised and of the rents and profits of the said hereditaments and premises after full payment and satisfaction of the said annuity or yearly sum of £ and all arrears thereof and all such costs charges and expenses as aforesaid unto the said A. B. and his assigns for his or their own use and benefit *And* it is hereby agreed and declared between the parties hereto that the receipt and receipts of the said E. F. his heirs or assigns shall be a good and sufficient discharge and good and sufficient discharges to the tenants and occupiers of the said hereditaments and premises for the rents issues and profits thereof and to any such mortgagee or mortgagees purchaser or purchasers of all or any part of the same premises as aforesaid for his her or their purchase or mortgage monies or for so much thereof respectively as shall in such receipt or receipts be acknowledged or expressed to be received and that the person or persons paying the same monies and taking such receipt or receipts for the same as aforesaid shall not afterwards be bound to see to the application thereof nor be responsible for the loss misapplication or non-application thereof or any part thereof *Provided also* that the said E. F. his heirs or assigns shall not be charged nor chargeable with nor responsible for any monies other than such as he or they shall actually receive by virtue of the trusts hereby in him and them reposed nor with nor for any loss or damage which may happen by placing all or any part of the same trust monies in any bank or bankers' hands or elsewhere for safe custody nor anywise in or about the execution of the aforesaid trusts without his or their wilful neglect or default *And* the said A. B. for himself his heirs executors and adminis-

No. CI.

*Secured on
Copyholds.*

trators doth covenant promise and agree with and to the said C. D. his executors administrators and assigns and also with and to the said E. F. his heirs and assigns (separately and apart from the said C. D. his executors administrators and assigns and so far as relates to the title possession and further assurance of the said customary or copyhold hereditaments and premises) by these presents in manner following that is to say that he the said A. B. is and standeth lawfully and rightfully seised of the said lands hereditaments and premises for an estate for the term of his life according to the custom of the manor of aforesaid without any condition restraint or other cause matter or thing whatsoever to change alter revoke make void lessen or determine the same *And also* that he the said A. B. hath good right to surrender and assure the same lands hereditaments and premises to the use of the said E. F. his heirs and assigns upon the trusts and in manner aforesaid and according to the true intent and meaning of the covenant in that behalf hereinbefore contained *And* moreover that the said E. F. his heirs and assigns shall and may henceforth for and during the life of the said A. B. peaceably and quietly enter into and upon have hold occupy and enjoy all and singular the same customary or copyhold hereditaments and premises with their appurtenances and receive and take the rents and profits thereof upon the trusts aforesaid free and clear of and from all former and other gifts grants surrenders mortgages leases rents annuities and all other titles troubles charges and incumbrances whatsoever *And* Further assurance. *further* that he the said A. B. and all and every persons and person having or lawfully or equitably claiming or to claim any estate right title trust or interest in to or out of the said hereditaments and premises or any part thereof shall and will upon every reasonable request of the said C. D. his executors administrators or assigns or of the said E. F. his heirs or assigns but at the costs and charges of the said A. B. make do and execute or cause and procure to be made done and executed all and every such further and other acts assurances matters and things whatsoever for the better and more effectually charging the said customary or copyhold lands hereditaments and premises with the payment of the said annuity or yearly sum of £ and for the further and more effectual limiting and assuring the same premises to the use of the said E. F. his heirs and assigns upon the trusts aforesaid and according to the true intent and meaning of these presents as by the said C. D. his

No. CI.
Secure don
Copyholds.

As to insurance
 of life.

Agreement as
 to judgment.

executors administrators or assigns or the said E. F. his heirs or assigns or his their or any of their counsel learned in the law shall be lawfully and reasonably devised or advised and required *And* moreover that he the said A. B. shall not nor will at any time or times hereafter depart from nor leave the kingdom on military service or otherwise without first giving to the said C. D. his executors administrators or assigns one calendar month's notice thereof in writing under the hand of him the said A. B. *And* that the said A. B. shall and will from time to time and at all times during his life at the request of the said C. D. his executors administrators or assigns appear in person as often as there shall be occasion upon having reasonable notice at any office or place of insurance or send to such office notice of the place of abode of him the said A. B. and if necessary vouchers or certificates of the state of his health in order that the said C. D. his executors administrators and assigns may be enabled to insure his and their interest in the life of the said A. B. in such manner as he or they may think advisable [*When the estate is large, it may here be desirable to insert the ordinary form of an appointment of a receiver of the rents, see ante, pp. 197—201*] *And this Indenture further witnesseth* And it is hereby declared and agreed by and between the said parties to these presents that the judgment to be entered up against the said A. B. as aforesaid upon the said recited warrant of attorney is intended and agreed to be a further security to the said C. D. his executors administrators and assigns for the said annuity or yearly sum of £ and such proportionate part thereof as aforesaid but that no execution or executions shall be issued or taken upon such judgment unless and until the said annuity or yearly sum or some part thereof or such proportionate part thereof shall be in arrear for the space of thirty-one days next after the same shall become due and payable *And* that in case the said annuity or yearly sum of £ or any part thereof or such proportionate part thereof shall be behind and unpaid by the space of thirty-one days then and in such case and so often as the same shall happen it shall and may be lawful to and for the said C. D. his executors administrators or assigns to sue out such execution or executions upon or by virtue of the said judgment as he or they shall see fit for the recovery of the arrears of the said annuity and all costs and expenses which he or they shall bear pay or sustain for or by reason of the non-payment thereof *And* it is hereby further declared and agreed

that the said C. D. his executors administrators or assigns shall by with and out of the money to be recovered or raised by the ways and means last mentioned pay and satisfy himself and themselves all arrears of the said annuity or yearly sum of £ and all costs charges and expenses occasioned by non-payment thereof and shall pay the residue and surplus of the monies so to be recovered or raised to the said A. B. his executors administrators or assigns for his and their own use and benefit *Provided always* and it is hereby agreed and declared by and between the said parties to these presents that it shall not be necessary for the said C. D. his executors administrators or assigns to revive or cause to be revived the said judgment or do any act matter or thing to keep the same on foot notwithstanding the same judgment shall have been entered of record for the space of one year or upwards and that the said A. B. his heirs executors or administrators shall not nor will have or take nor attempt by any ways or means whatsoever to have or take any advantage of the want of reviving or keeping the said judgment on foot and that if he or they shall attempt so to do by action or other proceeding or proceedings whatsoever this present agreement shall or may be pleaded or shown in bar thereto any rule or practice of the Court of Queen's Bench to the contrary thereof in anywise notwithstanding *Provided* nevertheless that after the decease of the said A. B. and full payment to the said C. D. his executors administrators and assigns of the said annuity or yearly sum of £ and all arrears thereof up to the day of the decease of the said A. B. and of all such costs charges and expenses as aforesaid the said C. D. his executors administrators or assigns shall and will at the request costs and charges of the heirs executors or administrators of the said A. B. acknowledge satisfaction upon the record of the said judgment in due form of law or do any further or other reasonable act or acts matters or things that may then be required in regard thereto so that for the doing thereof the said C. D. his executors administrators or assigns be not compellable to travel from his or their usual place or places of abode *Provided always* and it is hereby declared and agreed by and between the said C. D. and the said A. B. that in case the said A. B. shall at any time after the expiration of two years to be computed from the day of the date of these presents be desirous of re-purchasing the said annuity or yearly sum of £ and shall give to the said C. D. his executors administrators or assigns three calendar months'

No. CI.
Secured on
Copyholds.

Power to re-
purchase.

No. C1.

*Secured on
Copyholds.*

notice in writing of such desire and upon the expiration of the said notice or at any time afterwards and on giving such notice as aforesaid shall well and truly pay or cause to be paid to the said C. D. his executors administrators or assigns the full sum of £ being the consideration money for the purchase of the said annuity and do and shall also well and truly pay or cause to be paid to the said C. D. his executors administrators or assigns all sums of money that shall then be due to him or them for or on account of the said annuity of £ and also a proportionate part of the same annuity up to and inclusive of the day of re-purchasing the same and shall also well and truly pay or cause to be paid to the said E. F. his heirs or assigns all sums of money which shall then be due to him or them for or on account of such costs charges and expenses as shall have been advanced paid or incurred by him or them in the execution of the trusts aforesaid then and in that case the said C. D. his executors administrators or assigns shall and will accept and take the said sum of £ as and for the price of re-purchase and in satisfaction and full discharge of the said annuity of £ and upon the request and at the costs and charges of the said A. B. his heirs executors or administrators the said C. D. his executors administrators or assigns shall and will acknowledge satisfaction upon the record of the said judgment and then and in such case the said annuity of £ and the several covenants and agreements powers and remedies hereinbefore contained for payment and security of the said annuity shall cease and be void to all intents and purposes whatsoever and then also the said E. F. his heirs or assigns shall and will at the request costs and charges of the said A. B. re-surrender and re-assure all and singular the said customary or copyhold hereditaments and premises with their appurtenances to the use of the said A. B. and his assigns for his life subject nevertheless and without prejudice to any such sales or mortgages which may be made at any time hereafter under and by virtue of the trusts hereinbefore contained and then also the said C. D. his executors administrators or assigns shall and will at the like request costs and charges of the said A. B. assign and transfer to him the said A. B. his executors administrators or assigns for his and their own use and benefit any policy or policies of insurance which may have been effected by the said C. D. upon the life of the said A. B. in connexion with this present security

In witness &c.

No. CH.

Demise of a Leasehold Estate as a Collateral Security for the Payment of an Annuity for Lives.

No. CH.

Secured on Leaseholds.

This Indenture &c. Between (*grantor*) of &c. of the one part (*grantee*) of &c. of the other part *Whereas* by indenture bearing date &c. and made between (*original lessor*) therein described of the one part and (*lessee*) also therein described of the other part For the considerations therein mentioned the said (*lessor*) did demise unto the said (*lessee*) his executors administrators and assigns *All* that piece or parcel of ground &c. *To hold* the same with the appurtenances unto the said (*lessee*) his executors administrators and assigns from the day of then last past during the term of years thence next ensuing under the clear yearly rent of £ payable quarterly on the days therein mentioned *And* subject to the several covenants agreements and provisoes therein contained *And whereas* by divers mesne assignments and other acts in the law particularly by indenture of assignment bearing date on or about the day of and made between (*assignor*) therein described of the one part and the said (*grantor*) of the other part the said piece or parcel of ground messuage buildings and other the premises comprised in the said recited indenture were assigned to or became vested in the said (*grantor*) *And whereas* the said (*grantor*) in consideration of the sum of £ to be to him paid by the said (*grantee*) hath agreed to grant unto him the said (*grantee*) his executors administrators and assigns one annuity &c. during the natural lives of (*nominees*) and the life of the survivor of them *And* for better securing the payment of the said annuity to the said (*grantee*) he the said (*grantor*) by his bond &c. bearing even date herewith and executed immediately before these presents is and stands bound to the said (*grantee*) his executors administrators and assigns in the penal sum of £ with a condition thereunder written that if the said (*grantor*) his executors administrators or assigns should and did well and truly pay unto the said (*grantee*) his executors &c. during the lives of the said (*N*) and the life of the longest liver of them the annuity or &c. of £ clear of all taxes charges and deductions whatsoever [*name the days*] or on the days and in manner therein mentioned then the said bond to be void *And*

Recital of lease.

Mesne assignments.

Contract for purchase.

Bond.

No. CII. <i>Secured on Leaseholds.</i>	<i>whereas</i> previous to the granting of the said annuity he the said (<i>grantor</i>) agreed to assign the messuage tenements and premises so assigned to and vested in him as aforesaid as a further security for payment of the same annuity in such manner as is hereinafter mentioned and expressed <i>Now</i> &c. in pursuance and performance of the said agreement and in consideration of &c. to the said (<i>grantor</i>) in &c. paid by the said (<i>grantee</i>) at &c. in full for the absolute purchase of the said annuity so granted and payable to him the said (<i>grantee</i>) by the said bond as aforesaid the receipt &c. and for &c. payment &c. unto &c. (<i>grantee</i>) his &c. during the lives &c. <i>He</i> the said (<i>grantor</i>) <i>Doth</i> demise unto the said (<i>grantee</i>) his executors administrators and assigns <i>All that</i> &c. comprised in and demised by the said indenture of lease as hereinbefore is mentioned with their rights easements and appurtenances <i>To have and to hold</i> the said messuage &c. unto the said (<i>grantee</i>) his executors &c. for the residue of the said term of years except the last three days of the said term subject to the proviso hereinafter contained <i>Upon trust</i> for the better securing the payment of the said annuity or &c. of £ according to the true intent and meaning of the said in part recited bond but upon trust (<i>to permit grantor to receive rents until default</i> , see <i>ante</i> , p. 191) and upon further trust <i>That</i> in case the said annuity or any part thereof shall be unpaid for thirty days after any day appointed for the payment thereof by the said recited bond it shall be lawful for the said (<i>grantee</i>) his executors &c. during the lives &c. out of the rents issues and profits of the said hereby demised messuage &c. to receive so much money as shall be sufficient to pay and discharge all arrears of the said annuity and also all costs damages charges and expenses to be from time to time occasioned by such non-payment thereof <i>And</i> the said (<i>grantor</i>) doth hereby direct the present and all future tenants of the said hereby demised premises to pay to the said (<i>grantee</i>) his executors &c. during the lives &c. so much of their respective rents of the said premises when the same shall become payable as shall be sufficient to pay and satisfy to him and them the said annuity or &c. of £ together with all costs and charges which shall or may happen by reason of the non-payment thereof in manner aforesaid and that the receipts of him the said (<i>grantee</i>) his executors &c. shall be as good and sufficient discharges to the said tenants as if the said rents had been actually
Agreement to assign lease.	
Habendum.	
Declaration of trusts.	

paid to the said (*grantor*) his executors &c. *Provided always* and it is hereby declared and agreed by and between the said parties hereto *That* if the said (*grantor*) his executors administrators or assigns or any of them shall and do well and truly pay or cause to be paid unto him the said (*grantee*) his &c. during the lives &c. and the life of &c. the said annuity or &c. on the &c. and also upon the death of the survivor of them the said (*nominees*) all arrears of the said annuity up to the day of the death of such survivor that then the said (*grantee*) his executors &c. shall at any time thereafter upon the request and at the cost of the said (*grantor*) his executors &c. surrender the premises hereby demised unto the said (*grantor*) his executors &c. *And* the said (*grantor*) for himself &c. doth covenant &c. in manner following &c. *That* he shall &c. [pay annuity &c. see *ante*, pp. 189, 206] *And* also shall and will pay the rent of £ so reserved and payable for the said messuage &c. and premises as aforesaid as also all other taxes and duties touching the same and shall save harmless and keep indemnified the said (*grantee*) his executors &c. of and from the same *And further* *That* the said (*grantor*) his &c. at his and their own proper costs and charges shall and will from time to time and at all times during the lives of &c. and the life of &c. insured and keep insured the said hereby demised premises &c. (see *ante*, p. 194) *And* in case the said premises shall happen to be destroyed by fire or otherwise that then the said (*grantor*) his executors administrators or assigns shall and will forthwith lay out all such monies insured or to be insured on the said premises in the rebuilding and making good all the damages so happening as aforesaid *And further* *That* the said indenture of lease of the day of is now a good valid and effectual lease of said hereditaments and premises hereinbefore expressed to be demised and is in full force unforfeited and unsurrendered and in no wise become void or voidable *And* that all and singular the rents covenants conditions and agreements in and by the said indenture of lease reserved and contained and on the part of the lessee his executors administrators and assigns to be paid observed and performed have been paid observed and performed up to the date of these presents *And also* that he the said (*grantor*) now hath good right and full power to demise the said hereditaments and premises hereinbefore expressed to be demised for the term and in manner aforesaid *And also* that if default shall be made in payment of the said annuity or any part thereof it shall be lawful for the said (*grantee*) his executors ad-

No. CII.
Secured on
Leasholds.

Proviso for
surrender of
term upon pay-
ment of an-
nuity.

Covenants.

No. CII.
*Secured on
 Leaseholds.*

Further assur-
 ance.

To perform
 covenants in
 lease.

ministrators and assigns to enter into or upon the said hereditaments and premises or any part thereof and the same thenceforth during the same term quietly to hold occupy and enjoy and receive and take the rents and profits thereof without any lawful interruption or disturbance from or by the said (*grantor*) his executors administrators or assigns or any other person *And* that free and discharged or otherwise by the said (*grantor*) his executors or administrators sufficiently indemnified from and against all estates incumbrances claims and demands whatsoever *And moreover* that he the said (*grantor*) his executors and administrators and every other person having or lawfully or equitably claiming any estate right title or interest property claim or demand of in or to the said hereditaments and premises or any part thereof shall and will from time to time and at all times so long as the said annuity or any part thereof shall be payable upon the request of the said (*grantee*) his executors administrators or assigns but at the costs of the (*grantor*) his executors or administrators do and execute every such lawful act thing and assurance for the further or more perfectly assuring the said hereditaments and premises and every part thereof unto the said (*grantee*) his executors administrators or assigns for the remainder then unexpired of the said term hereby granted as by the said (*grantee*) his executors administrators or assigns shall be reasonably required [*And* that he the said (*grantor*) his executors administrators or assigns shall and will from time to time and at all times so long as the said annuity or any part thereof shall be payable pay observe and perform or cause to be paid observed and performed all and singular the rents covenants conditions and agreements in and by the said indenture of lease reserved and contained and on the part of the lessee his executors administrators or assigns to be paid observed and performed and keep the said (*grantee*) his executors administrators and assigns indemnified against all actions suits proceedings costs charges damages claims and demands whatsoever if any which shall or may be incurred or sustained by reason or on account of the non-payment non-observance or non-performance of the same rents covenants conditions or agreements or any of them] *In witness &c.*

No. CIII.

Covenant to pay an Annuity with an Assignment of Life Interest in Stock standing in the Names of Trustees. (Concise Form.)

No. CIII.

*Secured on
Stock.*

This Indenture made &c. Between (Grantor) of &c. of the one part and (Grantee) of the other part Whereas by an indenture bearing date on or about the 20th day of April 1830 and made or expressed to be made between R. P. therein described of the first part the said (grantor) and Mary his wife of the second part and (two trustees) of the third part the said R. P. did by the said indenture now in recital in pursuance of such power and authority as therein mentioned direct and appoint the sum of £5,000 £3 per Cent. Consolidated Bank Annuities being two-ninth parts of the capital and sum of £ and £ of like annuities in the said indenture particularly mentioned unto her said daughter the said Mary the wife of the said (grantor) immediately after the decease of the said R. P. And by the said indenture now in recital the said (grantor) and Mary his wife Did covenant and agree with the said (trustees) that the said sum of £5,000 £3 per Cent. Consolidated Bank Annuities so appointed by the said R. P. should when the same became transferable be transferred or the monies arising therefrom should be invested in the purchase of stock in the names of the said (trustees) Upon trust to pay the dividends thereof to the said (grantor) and his assigns for his life and after his decease Upon the trusts therein declared of and concerning the same And whereas the said R. P. departed this life some time since and soon after his decease the said sum of £5,000 £3 per Cent. Consolidated Bank Annuities was transferred into the names of the said (trustees) and the same is now standing in their names in the books kept by the Governor and Company of the Bank of England for the purpose of entering such transfers And whereas the said (grantor) Hath contracted with the said (grantee) for the sale to him of one annuity of £ during the life of the said (grantor) and to be secured as hereinafter mentioned for the sum of £ And whereas in pursuance of the said agreement the said (grantee) hath this day paid the sum of £ in notes of the Governor and Company of the Bank of England to the said (grantor) and it is intended that the said (grantor) shall immediately after the execution of these presents execute a warrant of attorney bearing even date here-

Recital showing that party was entitled to rent for life in stocks.

Of transfer of stock into trustees' names.

Of contract for sale of annuity.

Of payment of consideration, and of execution of warrant of attorney.

No. CIII.
Secured on
Stock.

Covenant to
pay an annuity.

Assignment of
life interest in
dividends of
stock.

with authorizing certain attornies in her Majesty's Court of Queen's Bench to confess judgment against the said (*grantor*) in an action for debt at the suit of the said (*grantee*) for the sum of £ and it is agreed that the judgment shall be immediately entered up accordingly *Now this Indenture witnesseth* That in consideration of the said sum of £ by the said (*grantee*) paid to the said (*grantor*) as aforesaid the receipt of which said sum of £ the said (*grantor*) doth hereby acknowledge and from the same *Doth* release and discharge the said (*grantee*) his heirs executors administrators and assigns the said (*grantor*) doth hereby for himself his heirs executors and administrators covenant and agree with the said (*grantee*) his executors administrators and assigns that the said (*grantor*) his heirs executors or administrators shall and will pay unto the said (*grantee*) his executors administrators and assigns one annuity of £ of lawful money of Great Britain to be payable during the life of the said (*grantor*) by equal quarterly payments on the day of &c. without any deduction whatsoever on account of anything whatsoever the first quarterly payment to be made on the day of next ensuing if the said (*grantor*) shall be then living and if the said (*grantor*) shall depart this life on any other than one of the said quarterly days of payment shall and will pay a proportional part of the said annuity of £ to the said (*grantee*) his executors administrators and assigns immediately after the decease of the said (*grantor*) for the time which he shall have lived of the then current quarter of a year *And this Indenture further witnesseth* That for the better securing the payment of the said annuity the said (*grantor*) *Doth* by these presents bargain sell and assign unto the said (*grantee*) his executors administrators and assigns *All* the dividends interest and annual proceeds which henceforth during the life of the said (*grantor*) shall become due in respect of the said sum of £5,000 £3 per Cent. Consolidated Bank Annuities or any other the funds and securities to or upon which the same or any part thereof may at any time during the natural life of the said (*grantor*) be transferred or invested *And* all the estate title interest and demand whatsoever of the said (*grantor*) of in to or out of the same premises together with full power and lawful and absolute authority to the said (*grantee*) his executors administrators and assigns in the name of the said (*grantor*) to sue for and recover and give receipts for the same interest dividends and annual proceeds for which purposes the said (*grantor*) doth hereby

irrevocably constitute the said (*grantee*) his executors administrators and assigns his lawful attorney and attornies *To have hold and receive* the said interest dividends and annual proceeds hereby assigned unto the said (*grantee*) his executors administrators and assigns during the life of the said (*grantor*) *Upon trust* that the said (*grantee*) his executors administrators and assigns *Do* and shall retain thereout and pay unto himself and themselves the yearly sum of £ in satisfaction of the said annuity of £ hereinbefore covenanted to be paid and such proportional part as aforesaid *And also* all such costs and expenses as he or they shall be put unto by reason of the non-payment of the said annuity or of the trusts hereby created and do and shall pay all the surplus of the said interest dividends and annual proceeds unto the said (*grantor*) and his assigns *And* the said (*grantor*) doth for himself his heirs executors and administrators covenant and agree with the said (*grantee*) his executors administrators and assigns that the said (*grantor*) is well entitled to the dividends and annual proceeds hereby assigned for the term of his life and that the said (*grantor*) now hath in himself absolute authority to assign the said dividends and annual proceeds *Upon the trusts* aforesaid freed from all incumbrances *And further* that the said (*grantor*) and all other persons whomsoever having or claiming any estate in the said dividends and annual produce shall at all times hereafter during the continuance of the said annuity of £ upon the request of the said (*grantor*) or his assigns do or cause to be done all further and other assurances whatsoever for the more effectually assigning the said dividends and annual produce unto the said (*grantee*) his executors administrators and assigns upon the trusts aforesaid *And* the said (*grantor*) doth for himself his heirs executors and administrators covenant and agree with the said (*grantee*) his executors administrators and assigns that the said (*grantor*) shall at all times hereafter and so long as the said annuity shall be payable at the request of the said (*grantee*) his executors administrators or assigns but at the costs of the said (*grantor*) appear in person and as often as there shall be occasion upon having reasonable notice thereof at any office or place of insurance or to any underwriter within the cities of London and Westminster and shall and will send to any such office or person notice in writing of his place of abode (if necessary) together with satisfactory vouchers or certificates of his being alive and of the state and condition of his health in order that

No. CIII.

Secured on
*Stock.*Upon trust
thereout to re-
tain annuity.Covenant by
grantor that he
has good right
to assign divi-
dends.And for further
assurance.Covenant by
grantor to ap-
pear at insur-
ance office.

No. CIII.

*Secured on
Stock.*To obtain
licence of in-
surance office
on going
abroad.That annuitant
may retain
extra insurance
out of divi-
dends assigned.Covenant by
grantor not to
do any act to
impeach policy
of insurance.Agreement
respecting
judgment.

the said (*grantee*) his executors administrators or assigns may insure the life of the said (*grantor*) *And also* that the said (*grantor*) shall not at any time during the continuance of the said annuity go upon the seas or leave or depart from Great Britain without first appearing at the office or offices of insurance wherein any policy is or shall be opened by the said (*grantee*) his executors administrators or assigns on the life of the said (*grantor*) and obtaining from such office or offices leave or permission for such his departure *And further* it is hereby declared that in case the said (*grantor*) shall upon any occasion whatsoever go upon the seas or leave and depart from Great Britain whereby the said (*grantee*) his executors administrators or assigns shall be put to any extra expense in insuring the life of the said (*grantor*) then it shall be lawful for the said (*grantee*) his executors administrators and assigns to retain to himself and themselves out of the said dividends and annual produce hereby assigned all such sums of money as he or they shall be put unto or sustain for or on account of such extra insurance *And further* the said (*grantor*) doth hereby for himself his heirs executors and administrators covenant and agree with the said (*grantee*) his executors administrators and assigns that the said (*grantor*) shall not nor will do any act or thing whatsoever which shall in anywise impeach or render void any policy of insurance to be effected by the said (*grantee*) his executors administrators or assigns on the life of the said (*grantor*) *And it is hereby further declared* that the said judgment so to be entered up against the said (*grantor*) as aforesaid is intended to be as a further security to the said (*grantee*) his executors administrators and assigns for the said annuity of £ and that no execution shall be issued upon the same until the said annuity or some part thereof shall be in arrear by the space of twenty days *And* in that case and so often as the said annuity shall be in arrear by the space of twenty days then and so often as the same shall happen it shall be lawful for the said (*grantee*) his executors administrators and assigns to sue out execution upon the said judgment for the recovery of the arrears of the said annuity of £ and all expenses (if any) occasioned by reason of the non-payment thereof *And further* that it shall not be necessary for the said (*grantee*) his executors administrators or assigns to revive the said judgment or do any act to keep the same on foot notwithstanding the same shall have been entered on record for the space of one year or upwards *And* that the said (*grantor*)

his heirs executors or administrators shall not take any advantage of the want of reviving or keeping the said judgment on foot and that if he or they do attempt so to do this agreement may be pleaded in bar thereto *And further* that after the decease of the said (*grantor*) and full payment of the said annuity of £ and all arrears thereof up to and including the day of the decease of the said (*grantor*) and of all such costs as aforesaid the said (*grantee*) his executors administrators and assigns shall at the request and costs of the heirs executors or administrators of the said (*grantor*) acknowledge satisfaction upon the said judgment on the record thereof *And* the said (*grantee*) for himself his heirs executors and administrators doth covenant and agree with the said (*grantor*) his executors administrators and assigns that in case the said (*grantor*) or his assigns shall be desirous of repurchasing the said annuity of £ at any time hereafter and of such his or their intention shall give six calendar months' notice in writing unto the said (*grantee*) his executors administrators or assigns then the said (*grantee*) his executors administrators or assigns shall upon the expiration of the said six months for which such previous notice shall be so given as aforesaid and on receiving from the said (*grantor*) full payment of the said annuity and all arrears and proportional part thereof up to and including the day of repurchasing the same *And* all sums of money which shall be then due on account of any costs occasioned by the non-payment thereof accept the sum of £ in full for the repurchase of the said annuity *And* the said (*grantee*) his executors administrators and assigns shall at the request and at the costs of the said (*grantor*) or his assigns release or assign the said annuity of £ and the securities for the same including any policy of insurance on the life of the said (*grantor*) in such manner or unto such person or persons as the said (*grantor*) or his assigns shall appoint and acknowledge satisfaction on the record of the said judgment and generally do any other reasonable act whatsoever necessary for the assigning or releasing the said annuity and the securities for the same so that for the doing thereof the said (*grantee*) his executors administrators or assigns be not compelled to go from his or their usual place or places of abode *In witness &c.*

No. CIII.

Secured on
Stock.Clause for re-
purchase.

ASSIGNMENTS OF ANNUITIES.

1. *An Annuity is assignable.* | 2. *Stamp.*

An annuity is assignable.

SECT. 1. It was formerly doubted whether an annuity was assignable though assigns were named in the grant (Perk. s. 101), it being considered a mere personal contract, and consequently a *chose in action*, 2 Vin. Abr. 515: but this objection was afterwards overruled, Hetl. 80. It seems, too, that naming the assigns is not essential to the making an annuity assignable, 7 Co. 28 b; Harg. Co. Litt. 144 b. An annuity, however, being in the nature of a *chose in action*, a power of attorney is usually given to sue in the name of the assignor for recovery of the arrears.

Stamp.

2. An assignment of an annuity requires an *ad valorem* stamp on the consideration money.

No CIV.

No. CIV.

Assignment.

Assignment of an Annuity.

Recital of grant of annuity.

This Indenture &c. Between (*assignor*) of &c. of the first part (*trustee of term*) of &c. of the second part (*assignee*) of &c. of the third part and (*new trustee of term*) of &c. of the fourth part *Whereas* by an indenture bearing date &c. and made between (*grantor*) therein described of the first part (*trustee of the term*) also therein described of the second part and said (*assignor*) of the third part for the considerations therein mentioned the said (*grantor*) did give grant and confirm unto the said (*assignor*) one annuity or clear yearly sum of £ free from all deductions whatsoever to be charged and chargeable upon and issuing out of all those the messuages lands tenements and hereditaments &c. *To hold* the said annuity and every part thereof unto the said (*assignor*) his executors administrators and assigns thenceforth for and during the natural life of the said (*grantor*) and a proportional part thereof to be paid on or at the days and times and in the manner in the now reciting indenture mentioned for payment of the same with the usual powers of distress and entry for recovering and enforcing payment thereof *And* by the said indenture now in recital the said (*grantor*) on the nomination and by the direction and appointment of the said (*assignor*) did grant

unto the said (*old trustee*) his executors administrators and assigns *All those* &c. hereinbefore described and by the now reciting indenture charged with the said annuity of £ and every part thereof with the appurtenances *To hold* the same unto the said (*T.*) his executors administrators and assigns from the day next before the day of the date of the now reciting indenture for and during and unto the full end and term of years thence next ensuing and fully to be complete and ended if the said (*grantor*) should so long live *Upon* the trusts therein expressed and declared of and concerning the same *And* by the now reciting indenture it was also agreed that the said (*grantor*) should be at liberty at any time thereafter to repurchase the said annuity at the price and on the terms therein mentioned *And whereas* the payment of the said annuity was further secured by a judgment confessed in her Majesty's Court of Queen's Bench at Westminster by virtue of a warrant of attorney from the (*grantor*) for that purpose *And whereas* the said (*assignor*) did effect an insurance with the office of on the life of the said (*grantor*) for the sum of £ to be paid to the said (*assignor*) or his executors on the decease of the said (*grantor*) in consideration of the annual premium of £ *And whereas* the said (*assignee*) hath contracted and agreed with the said (*assignor*) for the absolute purchase of the said annuity at the price or sum of £ *Now this Indenture witnesseth* That in pursuance of the said agreement and in consideration of the sum of £ of &c. to the said (*assignor*) paid by &c. the receipt whereof &c. *He* the said (*assignor*) doth by these presents bargain sell assign transfer and set over unto the said (*assignee*) his executors administrators and assigns *All that* the said annuity of £ in and by the said in part recited indenture granted secured and made payable unto the said (*assignor*) his executors administrators and assigns as hereinbefore mentioned and all arrears thereof and all and every sum and sums of money to become due and payable for and on account of the said annuity together with all remedies and powers in and by the said in part recited indenture given for recovering and receiving the same *And also* the judgment entered upon the said warrant of attorney and all benefit and advantage of the said judgment and all sum and sums of money to be recovered or obtained by virtue thereof *And also* the said policy of insurance and all and every sum and sums of money secured or recoverable thereon *And* all the right title interest trust property possession claim and demand whatsoever both at

No. CIV.
Assignment.

Warrant of attorney.

Insurance.

Testatum.

T.) his executors administrators and assigns *All those* the said messuages and tenements lands and hereditaments &c. in and by the said in part recited indenture demised unto the said (*assignor's T.*) his executors &c. *And* all the estate right title interest term and terms of years &c. claim and demand whatsoever of him the said (*assignor's T.*) and (*assignor*) or either of them of in to or out of the same *To have* &c. the messuages and tenements lands hereditaments and all and singular other the premises hereby assigned or otherwise assured or intended so to be and every part thereof with the appurtenances unto the said (*assignor's T.*) his executors administrators and assigns henceforth for and during all the residue and remainder of the said term of years now to come and unexpired *Upon* the trusts nevertheless and to and for the ends intents and purposes in or by the said indenture declared or expressed concerning the same and in such manner that all the benefit and advantage of the same trusts in favour of the said (*assignor*) his executors administrators and assigns shall henceforth belong to and be received and enjoyed by the said (*assignee*) his executors administrators and assigns according to the true intent and meaning of these presents (*a*) *And* the said (*assignor's T.*) for himself his executors administrators and assigns doth hereby covenant and declare with and to the said (*assignee's T.*) his executors administrators and assigns by these presents That he the said (*assignor's T.*) hath not at any time heretofore made done executed committed or knowingly or wilfully suffered any act matter or thing whatsoever whereby or by reason or means whereof the said messuages

No. CIV.

Assignment.

Declaration of trusts.

Covenant by the old trustee that he hath done no act to incumber.

(*a*) If, instead of assigning the term to a new trustee, the old trustee be continued, omit the further testatum, and say, "*And* it is hereby declared and agreed by and between the parties to these presents and particularly the said (*T.*) at the request and instance of the said (*assignor*) doth hereby for himself his heirs executors administrators and assigns covenant and declare with and to the said (*assignee*) his executors administrators and assigns That he the said (*T.*) his executors administrators and assigns shall and will from time to time and at all times hereafter during the continuance of the said term of years stand possessed of and be interested in the said messuages and tenements lands and hereditaments subject as aforesaid *Upon the trusts* and to and for the ends intents and purposes expressed and declared of and concerning the same nevertheless so and in such manner that all benefit and advantage of the same trusts in favour of the said (*assignor*) his executors administrators and assigns shall henceforth belong to and be received and enjoyed by the said (*assignee*) his executors administrators and assigns *And* the said (*T.*) doth hereby &c." (*covenant that he has done no act to incumber, as above*).

Declaration of trust as to the term.

No. CIV. and tenements lands and hereditaments hereby assigned or otherwise assured or intended so to be or the term of years therein or any part thereof are is can shall or may be impeached charged incumbered or prejudicially affected in any way whatsoever *And* the said (*assignor*) for himself his heirs executors and administrators doth hereby covenant and agree with the said (*assignee*) his executors administrators and assigns That for and notwithstanding any act deed matter or thing by him the said (*assignor*) made done committed or knowingly suffered to the contrary the said annuity &c. of £ is now subsisting and unredeemed and good and valid both at law and in equity and also the several securities given for the same are now in force *And* that he the said (*assignor*) hath at the time of executing these presents good right and full power and authority to bargain sell and assign the said annuity and other the premises hereby assigned or otherwise assured or intended so to be in manner aforesaid *And further* that he the said (*assignor*) hath not at any time heretofore done or knowingly or willingly suffered nor shall nor will make do or suffer any act deed matter or thing whatsoever whereby or by reason whereof the said annuity or any part thereof or any of the premises hereby assigned or otherwise assured or intended so to be are is can or may be impeached charged incumbered or in anywise prejudicially affected or the said warrant of attorney and policy of insurance or either of them are is can or may be in any way assigned satisfied released vacated or extinguished in consequence of which the said (*assignee*) shall may or can be prevented or hindered from receiving or taking the said annuity or &c. of £ or any part thereof as and when the same from time to time shall become due and payable *And* that he the said (*assignor*) his executors administrators and assigns shall and will from time to time at the reasonable request and at the costs and charges of the said (*assignee*) his executors &c. make do and execute all and every such further and other lawful and reasonable acts deeds assignments and assurances in the law whatsoever for the further better more perfectly and absolutely assigning and assuring the said annuity judgment policy of insurance and premises unto and to the use of the said (*assignee*) his executors administrators and assigns and for better enabling him and them to recover and receive the said annuity and all future payments thereof in such manner and form as by the said (*assignee*) his executors administrators or assigns or his or their counsel in the law shall be rea-

No. CIV.

Assignment.

Covenants from
assignor.

Annuity sub-
sisting, good
right to assign.

No act to in-
cumber.

Further assur-
ance.

sonably advised devised or required provided that the person or persons required to make the same shall not be compelled or compellable to go or travel from his or their respective places of abode for the doing thereof *And* the said (*assignee*) for himself his heirs executors and administrators doth hereby covenant with the said (*assignor*) his heirs executors or administrators that he the said (*assignee*) his heirs executors and administrators or some or one of them shall and will save defend keep harmless and indemnified the said (*assignor*) his heirs executors and administrators and his and their lands tenements goods and chattels of from and against all costs charges damages and expenses whatsoever which can shall or may be sustained or incurred or which may become payable for or by reason or in consequence of any action or suit or actions or suits which shall or may be brought or prosecuted in the name or names of the said (*assignor*) his executors or administrators or any of them under or by virtue of any power or authority hereby given or in pursuance hereof to be given to the said (*assignee*) his executors administrators or assigns so as the same do not arise or accrue through the collusion or act of the said (*assignor*) his executors or administrators *In witness &c.*

No. CIV.

Assignment.

Covenant by assignee to indemnify assignor from costs in consequence of his name being used.

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No. CV.

Assignment of Annuity to Trustees for the purpose of exonerating Part of the Estates charged therewith (a).

No. CV.

Equitable Release.

This Indenture made &c. Between (Annuitant) of &c. of the first part (Owner) of &c. of the second part A. B. (a trustee for a term of years for securing the annuity) of the third part and C. and D. of &c. of the fourth part Whereas [Recital of a will giving an annuity of £500 to the annuitant for her life with powers of distress and entry and a limitation of a term of 600 years to A. B. upon trusts for better securing the annuity with remainder to the owner in fee] And whereas the said (O.) hath contracted for the sale of certain parts of the hereditaments mentioned in the schedule to these presents and may hereafter dispose of

(a) This form has been frequently adopted to obviate the objection that a person having a rent-charge, by releasing his right in part of the land charged, extinguishes at law the whole rent-charge.

No. CV.
Equitable
Release.

other parts of the said hereditaments and the said (A.) hath therefore upon the application of the said (O.) agreed that the same hereditaments should be discharged from the said annuity or yearly rent *Now this Indenture witnesseth* That in pursuance of the said agreement and in consideration of the sum of 10s. of lawful money of Great Britain to the said (A.) paid by the said C. and D. at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged she the said (A.) doth by these presents grant bargain sell and assign unto the said C. and D. and their executors administrators and assigns *All that* the annuity or yearly rent of £500 devised to the said (A.) by the said will of the said (*testator*) and all powers and remedies vested in the said (A.) for enforcing payment of the said annuity or yearly rent when in arrear *And* all the estate right title and interest of her the said (A.) in or to the same annuity or yearly rent *To have and to hold* the said annuity or yearly rent hereby assigned or intended so to be unto the said C. and D. and their executors administrators and assigns *In trust* that the said C. and D. or the survivor of them or the executors administrators or assigns of such survivor do henceforth forbear from claiming or enforcing payment of the same annuity or yearly rent from or out of the several hereditaments mentioned in the schedule to these presents or any of the same or the appurtenances thereunto belonging *And in trust* that the said C. and D. or the survivor of them or the executors administrators or assigns of such survivor do from time to time receive and enforce payment of the same annuity or yearly rent from and out of the several other hereditaments devised by the said will of the said (T.) solely and exclusively of the hereditaments mentioned in the schedule to these presents and their appurtenances and do from time to time pay over the said annuity or yearly rent as and when the same shall be so received unto the said (A.) for her own use and benefit *And this Indenture lastly witnesseth* and the said A. B. doth hereby declare and agree and the said (O.) doth hereby direct and appoint That the said A. B. his executors administrators and assigns shall henceforth stand and be possessed of all such of the manors and hereditaments comprised in the said term of 600 years as are not specified in the schedule to these presents in trust that the same manors and hereditaments may be the sole and exclusive fund for payment of the said annuity or yearly rent of £500 in exoneration of the hereditaments comprised in the said schedule

[*Covenant by annuitant against incumbrances Provisoos for the appointment and indemnity of the trustees*] *In witness &c.*

No. CV.
*Equitable
Release.*

The schedule &c.

No. CVI.

Release of an Annuity on a Re-purchase.

No. CVI.
*Release of an
Annuity.*

This Indenture made &c. Between (releasor) of &c. of the first part (trustee) a trustee named for and on behalf of (releasee) of &c. of the second part and (releasee) of &c. of the third part

Whereas by Indenture &c. (recite grant of annuity see Assignment of Annuity) And whereas &c. (recite warrant of attorney)

And whereas the annuity is still subsisting and all arrears of the same have been paid up to the day of the date of these presents as the said (releasor) doth hereby acknowledge And whereas the said (releasee) hath agreed with the said (releasor) for the re-purchase of the said annuity of £

at or for the price or sum of £ and it hath been thereupon agreed that the said annuity and the securities for the same should be released and the said term of ninety-nine years be surrendered in manner hereinafter mentioned Now this Indenture witnesseth That in

pursuance of the said agreement and in consideration of the sum of £ of lawful money of Great Britain to the said (releasor) in hand paid by the said (releasee) the receipt &c. He the said (releasor) Doth hereby release and for ever discharge the said (releasee) his heirs executors administrators and assigns and every of them And the said messuage hereditaments and pre-mises charged with the payment of the said annuity of £

under and by virtue of the said recited indenture and every of them and every part and parcel thereof from the same annuity and all future payments thereof and from all powers and remedies for recovering and enforcing the payment thereof And also from all actions suits causes of action and suit costs charges damages expenses claims and demands whatsoever for or on account of the same annuity or any part thereof or any other security executed or given for the same or in anywise relating thereto And this Indenture further witnesseth That in further

Recitals.

Annuity still
subsisting.

Testatum.

Further testa-
tum.

No. CVI.
*Release of an
 Annuity.*

Covenant
 against incum-
 brances.

premises *He* the said (*T.*) at the request and by the direction of the said (*releasor*) testified &c. doth hereby release surrender and yield up unto the said (*releasee*) *All that* messuage &c. and all and singular other the premises which by the said hereinbefore in part recited indenture were demised to the said (*T.*) his executors &c. for the term &c. determinable as aforesaid with their and every of their appurtenances *And* all the estate &c. *To* the intent that the said term of ninety-nine years shall henceforth be merged and extinguished in the freehold and inheritance of the same premises *And* each of them the said (*releasor*) and (*T.*) so far as relates to his own acts deeds and defaults *Doth* hereby for himself his heirs executors and administrators covenant and declare with and to the said (*releasee*) his executors administrators and assigns that they the said (*releasor*) and (*T.*) have not nor hath either of them at any time heretofore made done committed or executed or been parties or party or privy to any act deed matter or thing whatsoever whereby or by reason or means whereof the said (*releasor*) is prevented or hindered from releasing the said annuity of £ and other premises hereinbefore released or intended so to be or whereby or by reason or means whereof the said annuity and other premises hereby released or intended so to be or any of them or any part or parts thereof are is can shall or may be assigned charged affected or incumbered in title estate or otherwise howsoever *In witness* &c.



Annuities in Deeds, see INDEX TO PRECEDENTS.

APPOINTMENTS.

1. *Definition.*

APPOINTMENTS IN EXECUTION OF A POWER.

2. *Operation of an Appointment in Execution of a Power.*
3. *Appointments by Feues Covert.*
4. *Requisites of an Appointment.*
5. *Power of Revocation.*
6. *Distributive Appointments.*
Exclusive Appointments.
Illusory Appointment Act, 11 Geo.
4 & 1 Will. 4, c. 46.
7. *Effect of certain Words in Appointments.*

8. *Stamp Duty on Appointments.*

APPOINTMENTS DELEGATING AN AUTHORITY.

9. *Delegation of Authority.*
10. *Naked Authority, by whom exercised.*
11. *Distinction between a naked Authority and one coupled with an Interest.*
12. *Delegated Authority, how to be executed.*
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SECT. 1. An appointment as a deed may be considered in two ways, Definition.
either as a relative and dependent instrument, springing out of and deriving its force from the Statute of Uses; or as an irrelative and independent instrument, delegating an authority to one person to act for or in behalf of another, 1 Wood's Conv. 465.

APPOINTMENTS IN EXECUTION OF A POWER.

2. An appointment, in the first sense of the word, is an instrument adapted for carrying into effect those particular modifications of uses which are denominated powers. Thus, suppose an estate be conveyed to A. and his heirs to the use of B. for life, remainder to such son as B. shall appoint, and B. appoints to the use of his first son; then the use vests in the son by the appointment, and the possession by the statute, which union of the use and possession constitutes what is termed the legal estate. The appointment operates not as a conveyance, but as the limitation of the use; the right to make this designation is termed the power; the exercise of the power is termed an appointment; the person exercising it the appointor, and the person taking under it the appointee, Butler's Co. Litt. 271 b, n. An appointment is, therefore, controlled by the pre-existing instrument on which it is founded; for, in notion of law, any one taking by virtue of an appointment is considered as taking under the instrument giving the power; with this restriction, however, that reference must be had to the nature of the instruments in construing the validity of an appointment. If the power be executed by will, the interest of the appointee, who is considered in the light of a devisee, will be ambulatory and revocable like the will itself, and consequently subject to the chance of a lapse, if the appointee die in the lifetime of the appointor,

Operation of an appointment in execution of a power.

Appointments. *Duke of Marlborough v. Godolphin*, 2 Ves. 61; but if made by any other instrument or deed, not in its nature revocable, the property upon which it attaches will be absolutely vested in the appointee, in like manner as if he had been named in the original conveyance. It follows, likewise, from the nature of this instrument, that no limitation in an appointment will be valid, unless it would have been so, if it had been made by the conveyance creating the power. Limitations, therefore, to the unborn children of an unborn child are void, because the law would not permit such a conveyance, as tending to a perpetuity, *Robinson v. Hurdcastle*, 2 T. R. 241. See Sugd. Pow. Ch. II. s. 3.

Appointment
by *femes covert*.

3. Where powers of appointment are given to women over real or personal estates, to be executed by them, notwithstanding coverture, or whether covert or sole, an appointment may be made by them in execution of such powers. An appointment is applicable, under the sanction of the Court of Chancery, to the disposition of separate property by a *feme covert*, who, though disabled at common law to make a will or regular conveyance, is allowed in equity a disposing power notwithstanding her coverture, and the instrument by which she exercises this power, whether in the shape of a will or otherwise, is considered as taking effect in the nature of an appointment. And in cases where married women are entitled to separate property in the hands of trustees, their appointment will be valid, although the trustees are not parties thereto, *Peacock v. Monk*, 2 Ves. 190; *Rippon v. Dawling*, Ambl. 565.

Requisites of
an appoint-
ment.

4. Where a person may dispose of an estate either under a power of appointment or as absolute owner of it, it is necessary, if he wish to convey under the power, to recite or refer to it; but when a disposition can only take effect as an appointment, it is not absolutely necessary to refer to or recite the deed creating the power, if it sufficiently appear that the party intend exercising it, 6 Co. 17; Cro. Eliz. 877. It is usual, in deeds of appointment, for the party exercising the power to declare, that he acts not only in exercise of that particular power, but also of every other power enabling him in that behalf. This latter clause is said in some cases to have reached powers that were understood to be extinguished, 1 Sugd. Pow. 243, 6th edit. Likewise every incidental circumstance prescribed in the creation of the power ought to be complied with in the instrument by which the power is executed, *Ib.* 264. If a writing is required, a disposition by parol is not valid, 1 Vern. 340. If a seal be required, a writing under hand will not be sufficient. So likewise as to signing, attestation, number and quality of witnesses, consent of particular persons, giving notice, &c., 1 Sugd. Pow. 294, 6th edit. If a deed be expressly required, it cannot be executed by will, *Darlington v. Pulteney*, Cowp. 260; but where a power is given generally, without any restriction as to the mode of execution, as "by any writing or instrument," it may

be exercised by deed or will. See *Collard v. Sampson*, 4 De G. Mac. & G. 224. (*As to appointments in a will, see post, WILLS, Pref.*)

5. A power of appointment includes in itself a power of revocation, although no such authority be expressly reserved in the deed creating the power. But where a power is executed by deed, the donee must expressly reserve a power of revocation in the deed executing the power, otherwise the appointment is irrevocable, even if the original power authorize the donee to appoint and revoke his appointment, *Hele v. Bond*, Prec. Chanc. 474; Sugd. Pow. 325, 6th ed. Where a power is executed by will, it is always revocable, although no express power of revocation is reserved, Sugd. *ub. sup.* Likewise a power given to one person cannot be given by him to a third person. A direction by an appointor to such a one, naming him, to appoint, limit or direct, as he shall think fit, &c. will be void; for, the donee of the power having himself but a delegated authority, this would be contrary to the maxim in law, that *delegatus non potest delegare*, 2 Atk. 88; 2 Ves. 643. But if power be expressly reserved to be executed by the appointor and his assigns, an execution by an assignee will in such case be good, and a devisee will be a good assignee, within the words of that power, T. Jones, 110; 1 Ventr. 338; 2 Show. 57. When a man has both a power and an interest, he is made not only to exercise his power, but also to convey his interest by grant (see PURCHASES). This, though not always necessary, is adopted by way of precaution, in case a power should not be well created, or be suspended or extinguished, Butl. Co. Litt. 271 b, n.

6. Appointments under a power may be either distributive or exclusive. Where the power of the appointment is to be distributive, a certain share must be given to all; but where it is exclusive, the party appointing is at liberty to give to some to the exclusion of the rest. At law, any share, however small, will satisfy the terms of the power; but in equity, relief was given at an early period against any appointment technically called an illusory appointment, where the share was very disproportionate to the amount of the fund to be distributed, and the number of objects to participate of it, 1 T. R. 438; 1 Vern. 67; Sugd. Pow. 494, 6th ed. But, in consequence of the difficulty of determining what ought to be deemed a substantial share, so as to render an appointment valid, and of the frequent litigation which was occasioned by this uncertainty, it is now provided, by the Illusory Appointment Act, 11 Geo. 4 & 1 Will. 4, c. 46 (one of the acts brought in by Lord St. Leonards), that no appointment, which shall be made in exercise of any power or authority to appoint any property, real or personal, shall be invalid, on the ground that the share is unsubstantial, illusory or nominal; by which provision the jurisdiction of the Court of Chancery is taken away, and the doctrine of appointments is restored to its original state as at common law. Sugd. Acts, Jenmet's ed.

Appointments.

Power of revocation.

Distributive appointments.

Exclusive appointments.

Illusory Appointment Act,
11 Geo. 4 & 1
Will. 4, c. 46.

Appointments.

Effect of certain words in appointments.

7. Where it is intended to give a power of appointing a fund to several objects, or any of them exclusively, the intention ought to be expressed with precision, as, "to all or every such one or more exclusively of the other or others of the objects as the donee shall appoint." It has been held, that a power to appoint amongst the children as the donee shall think proper, did not authorize an exclusive appointment, the word "amongst" being equivalent to "all and every," *Kemp v. Kemp*, 5 Ves. 849. And in an early case, upon a gift to the wife upon trust and confidence that she would not dispose thereof but for the benefit of the children, it was determined that no child could be excluded, *Menzey v. Walker*, Cas. Ab. Eq. 72. See Sugd. Pow. Ch. IX. s. 3.

Stamp duty on appointments.

8. By the 55 Geo. 3, c. 184, the stamp required for an appointment, by any writing not being by will or deed, in execution of a power, is 1*l.* 15*s.*; and for every entire quantity of 1080 words over and above the first 1080 words a further progressive duty of 1*l.* 5*s.* An appointment *by deed*, where there is no *ad valorem* duty, requires a similar stamp. By the 13 & 14 Vict. c. 97, the progressive duty is reduced to 10*s.* for every entire 1080 words over and above the first 1080 words. (As to appointments upon a sale or mortgage, see *post*, CONVEYANCE, MORTGAGE.)

APPOINTMENTS DELEGATING AN AUTHORITY.

Delegation of authority.

9. A delegation of an authority must be by deed, in order to show that the person appointed actually has the power to represent his principal, and to what extent, Salk. 9. It is not however necessary for an attorney, having merely a naked authority given to him, to be a party to the deed appointing him, 2 Roll. Ab. 8, 9; Shep. Touchst. 217.

Naked authority by whom exercised.

10. Few persons are excluded from exercising a naked authority, to which they are delegated, for the execution of such an authority can be attended with no prejudice or inconvenience to the parties acting under it; therefore, infants and femes covert may act as attorneys, Perks. 148; Co. Litt. 52 a, and 112 a. See Sugd. Powers, Ch. III. s. 1.

Distinction between a naked authority and one coupled with an interest.

11. The distinction between a naked authority and one coupled with an interest was formerly of greater importance than it is now, owing to the intervention of courts of equity. It was formerly held, that if one of two executors empowered by a will to sell lands died, the survivor could not sell, having merely a naked authority, Co. Litt. 113 a. But equity would now compel an execution of the power in favour of those for whom it was created, 1 Ch. Ca. 139; Harg. Co. Litt. 113 a, n. 2. At common law, if one of several executors empowered to sell lands refused, the others could not sell; but by 21 Hen. 8, c. 4, the rest in that case are invested with the power of selling.

12. When a person has an authority, as an attorney, to do any act, he ought to do it in the name of the person giving the authority, 9 Co. 76; Stra. 765. Where executors are empowered to sell lands, they may do it in their own name, 9 Co. 77 a. So when a man does an act which cannot be effectual, otherwise than as done by virtue of his authority, this shall be deemed to be in execution of his authority, although done in his own name, Salk. 95, 96.

Appointments.

Delegated authority how to be executed.

13. A deputy cannot appoint a deputy, nor a person having a power of attorney delegate his power to another, unless he be expressly authorized so to do by the deed of appointment, 2 Roll. Ab. 8; Bunb. 166.

Not to be delegated.



No. CVII.

No. CVII.

Appointment of a Freehold Estate to Children, to be indorsed on a Deed of Release. Frecholds, &c.

Know all men by these Presents That I the within named (husband) by force and virtue of the power and authority to me in that behalf given or reserved in and by the within written indenture and of all other powers and authorities enabling me thereunto do by this my writing under my hand and seal attested by the persons whose names are hereunder subscribed as witnesses hereunto direct limit and appoint all and every the manors messuages lands tenements and hereditaments in and by the within written indenture granted and released or mentioned or intended so to be with the appurtenances thereof from and immediately after the decease of me the said (H.) and (W.) my now wife to the use of all and every the children [whether sons or daughters] of me the said (H.) by the said (W.) my wife born or to be born [except an eldest or only son for the time being of me and my said wife] to be equally divided between them share and share alike as tenants in common and not as joint tenants And the heirs of the respective bodies of all and every the said children lawfully issuing [except of such eldest or only son] And if one or more such children shall happen to die without issue then as to the share or shares of him or her or them so dying without issue to and to the use of the survivors or others of them [except as aforesaid] share and share alike and the heirs of their respective bodies issuing [except as aforesaid] And if all such children but one shall happen to die without issue or if there shall be but one such child besides an eldest or only son

Appointment.

To the use of children equally.

Survivorship.

No. CVII.
Freeholds, &c.

Provisions to
a younger son
becoming an
elder.

Power of revo-
cation.

then to and to the use of such only child and the heirs of his or her body issuing *And* in default of such issue then to and to the use of such eldest or only son and the heirs of his body *And* in default of such issue then to and to the use of me the said (H.) and of my heirs and assigns for ever *Provided always* That if any younger son of me by my said wife shall by the death of an elder son without issue become an eldest or only son then and in such case and so often as the same shall happen the share and shares of such younger son so become an elder or only son shall be go and remain to the use of and amongst the rest of my said children and the heirs of their respective bodies in like manner as if such younger son had been actually dead without issue any thing herein contained to the contrary in anywise notwithstanding *Provided always* That it shall be lawful for me the said (H.) at any time or times during my life by any deed or by my last will and testament in writing legally executed and attested to revoke alter make void or change all and every or any the uses and estates hereby limited or appointed of or concerning the said manor messuages lands tenements and hereditaments or any part thereof and by the same deed or will to limit direct and appoint the same or any part thereof to the use of all or any one or more of my children by my said wife and the heirs of their or any of their respective bodies in such parts and proportions manner and form as I shall think fit conformably with the power in the within written indenture contained and either with or without power of revocation any thing herein or in the within written indenture contained to the contrary in anywise notwithstanding *In witness &c.*

Appointment under a Power in a Settlement where old Uses are revoked and new ones are appointed, see post, PURCHASES.

Conveyance by Appointment and Grant from a Vendor to Purchaser, see post, PURCHASES.

No. CVIII.

Appointment of Freehold and Copyhold Estates under a Power in a Settlement, with Power of Revocation, where the Legal Estate is vested in the Trustees.

No. CVIII.
Of Freeholds
and Copyholds.

This Indenture &c. Between (husband) of &c. and S. his wife of the first part (trustees) of &c. of the second part (eldest son) eldest son of the said (H.) and S. his wife of the third part (second son) second son of the said (H.) and S. his wife of the fourth part and (third son) third son and only other surviving child of the said (H.) and S. his wife and which said (T. S.) is a minor of the age of or thereabouts of the fifth part Whereas by an indenture of appointment and release bearing date the day of and made between the said (H.) and S. his wife of the one part and the said (T.) of the other part It was witnessed That in pursuance of and obedience to a decree or decretal order of the High Court of Chancery made in a cause wherein the said (H.) and S. his wife were plaintiffs and the said (T.) were defendants and in pursuance and by virtue of certain powers and authorities given and reserved to the said (wife) in that behalf and in exercise and execution thereof she the said (W.) with the privity and approbation of the said (H.) did direct limit and appoint that all and singular the freehold messuages or tenements hereditaments and premises thereafter mentioned and expressed to be thereby granted and released with their and every of their appurtenances should go be and remain to the use of the said (T.) their heirs and assigns for ever upon the trusts thereafter declared concerning the same And it was by the said indenture of appointment and release further witnessed That in further pursuance of the said decretal order the said (H.) and S. his wife did grant release and confirm to the said (T.) and their heirs All &c. To hold the same unto and to the use of the said (T.) their heirs and assigns for ever upon the trusts thereafter declared of and concerning the same And by the said indenture now in recital it was declared and agreed between the said parties thereto and particularly the said (H.) did thereby for himself his heirs executors administrators and assigns and for the said S. his wife and her heirs covenant and agree with the said (T.) their heirs and assigns that the said (H.) and S. his wife together with any person or persons therein named should as soon as conveniently might be after payment

Recital of deed
of appoint-
ment,

and grant.

No. CVIII. <u>Of Freeholds and Copyholds.</u>	of a certain mortgage debt of £ of the lord of the manor of L said manor by the yearly rent of £	surrender into the hands <i>All that</i> &c. holden of the to the use of the said (T.) their heirs and assigns for ever according to the custom of the said manor upon the trusts thereafter declared concerning the same <i>And</i> it was by the said indenture now in recital mutually declared and agreed by and between all the said parties thereto that the said (T.) their heirs and assigns should from thenceforth stand and be seised of or entitled to and interested in all and singular the said freehold and customary or copyhold messuages lands tenements hereditaments and premises therein- before mentioned and described and thereby limited and ap- pointed granted or released or intended so to be and covenanted to be surrendered respectively as aforesaid <i>In trust</i> for the said (H.) and his assigns during his life and after his decease <i>In</i> <i>trust</i> for the said (W.) and her assigns during her life for her jointure and in bar of dower and after the decease of the said (H.) and S. his wife or of the survivor of them then <i>In trust</i> for all and every the children of the said (H.) on the body of the said (W.) begotten for such estates at such ages and in such parts shares and proportions and with such remainders and limitations over and charged and chargeable with the payment of such annual or gross sums [such remainders or limitations over being and charges to be for the benefit of such children some or one of them] and in such manner and form as they the said (H.) and S. his wife at any time or times during their joint lives by any deed or deeds in writing with or without power of revocation to be by both of them sealed and delivered in the presence of two or more credible witnesses should jointly direct or appoint and in default of such joint direction or appointment as the survivor of them the said (H.) and S. his wife by any deed &c. executed as aforesaid or by his or her last will and testament in writing or any writing purporting to be in the nature of his or her last will and testament or any codicil should direct or appoint and in default of any such direc- tion or appointment upon the several trusts mentioned in the indenture now in recital <i>And whereas</i> by an indenture bearing date the day of [indorsed on the said recited indenture of appointment and release] and made between the said (H.) and S. his wife of the first part the said (T.) of the second part and (new trustees) of &c. of the third part after reciting that the said mortgage debt of £ had been paid but that no sur-
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Uses.

Appointment
of new trustee.

render of the said copyhold hereditament had been made to the said (*T.*) their heirs and assigns in pursuance of the covenant in the said recited indenture for that purpose contained and that the said (*one old trustee*) was desirous of relinquishing the trusts by the same indenture reposed in him jointly with the said (*other O. T.*) and had applied unto the said (*H.*) and S. his wife to be discharged therefrom and that thereupon the said (*H.*) and S. his wife had applied unto and had requested the said (*N. T.*) to become a trustee for the purposes of the same indenture jointly with the said (*O. T.*) in the stead and room of the said (*one O. T.*) to which the said (*N. T.*) had consented and agreed *It was by the Indenture* now in recital witnessed That the said (*H.*) and S. his wife did nominate constitute and appoint the said (*N. T.*) to be a trustee in the room and stead of the said (*O. T.*) to act with the said (*other O. T.*) in the trusts mentioned in the said indenture *And* by the said indenture now in recital the said (*O. T.*) at the request and by the direction of the said (*H.*) and S. his wife *Did* grant and release unto the said (*N. T.*) and his heirs *All* the premises so granted and released unto and to the use of the said (*O. T.*) their heirs and assigns *To hold* the same unto the said (*N. T.*) his heirs and assigns to the use of the said (*O. T.*) and the said (*N. T.*) their heirs and assigns for ever upon the trusts declared in the said indenture *And* in the same indenture is contained a covenant on the part of the said (*H.*) to surrender or procure to be surrendered all the copyholds to the use of the said (*O. and N. T.*) their heirs and assigns upon such trusts as aforesaid *And whereas* the said (*H.*) and S. his wife have determined to make such appointment in favor of their said children as is hereinafter contained *Now this Indenture witnesseth* That by force and virtue and in exercise and execution of the power or authority to them the said (*H.*) and S. his wife for this purpose given by the said recited indenture of the day of and of all other powers and authorities in anywise enabling them or either of them in this behalf they the said (*H.*) and S. his wife do jointly direct and appoint that the said (*O. and N. T.*) their heirs and assigns shall immediately from and after the decease of the survivor of them the said (*H.*) and S. his wife stand and be seised of all and singular the said freehold and customary or copyhold messuages lands tenements hereditaments and premises described in the said recited indenture of appointment and re-

No. CVIII.
*Of Freeholds
and Copyholds.*

Grant to the
new trustee.

Covenant to
surrender
copyholds.

Appointments.

No. CVIII.
Of Freeholds
 and Copyholds.

Uses.

Power of re-
 vocation.

lease and so respectively conveyed and covenanted to be surrendered to them as aforesaid and of their and every of their appurtenances upon the trusts and subject to the proviso hereinafter expressed and contained of and concerning the same that is to say as to one equal undivided third part or share [the whole into three equal parts or shares to be divided] of and in the said freehold and customary &c. with the appurtenances *In trust* for the said (*E. S.*) his heirs and assigns for ever *And* as to one other equal undivided third part &c. of and in the same freehold &c. *In trust* for the said (*S. S.*) his heirs and assigns for ever *And* as to the remaining undivided third part &c. *In trust* for the said (*T. S.*) his heirs and assigns for ever *But* if the said (*T. S.*) shall die under the age of 21 years without leaving issue of his body living at the time of his decease then *In trust* for the said (*E.*) and (*S. S.*) in equal shares as tenants in common and for their respective heirs and assigns for ever *Provided always* and the said (*H.*) and *S.* his wife do hereby further direct and appoint that it shall be lawful for them the said (*H.*) and *S.* his wife, at any time or times during their joint lives by any deed or deeds writing or writings with or without power of revocation (*a*) to be by both of them sealed and delivered in the presence of two or more credible witnesses or for the survivor of them the said (*H.*) &c. at any time or times during the life of such survivor by any deed &c. to be by him or her executed as aforesaid or by his or her last will or testament in writing or any writing &c. to be by him or her signed and published in the presence of and to be attested by two or more credible witnesses to revoke all or any of the trusts hereinbefore appointed of and concerning the said messuages &c. and in lieu of the trusts so revoked to appoint such other trusts as the said (*H.*) &c. or the survivor of them shall conformably to the power or authority in that behalf contained in the said first recited indenture think proper any thing hereinbefore contained to the contrary notwithstanding.

In witness &c.

(*a*) In an appointment by deed, such a power must be expressly reserved, see *ante*, Pref. sect. 5.

Mortgage by Appointment and Grant, with Power of Sale, see post, MORTGAGES.

—◆—
No. CIX.

Appointment of a Jointure by Virtue of a Power under a Will.

No. CIX.
Of a Jointure.

Obs. A jointure is strictly a joint estate in freehold lands, limited to the husband and wife; but on account of the numerous inconveniences which attended such a limitation of lands, as well to the widow as to the heir, it has long been the general practice to limit a rent-charge to the intended wife for her life by way of jointure, to commence from the death of the husband, with powers of distress and entry, and generally with a term for years to a trustee for further securing the payment thereof. By the Statute of Uses, 27 Hen. 8, c. 10, s. 6, such a jointure or settlement upon a wife before marriage will be a bar of her dower in the case of adult women, but it has been held not to extend to infants. An infant may, therefore, notwithstanding a jointure settled upon her, waive it, and elect to take her dower. So if a jointure be made after marriage, it would not have barred the wife of her dower, either at law or in equity, unless she accept the jointure after her husband's death, Noy's Max. 40; in this latter case it is presumed that the dower of a woman married since the 1st of January, 1834, may be barred by 3 & 4 Will. 4, c. 105, ss. 6, 7. See Shelford's Real Prop. Stat., pp. 420—422, 427, 6th ed.

This Indenture made &c. Between (intended husband) of &c. grandson &c. of the first part (father of intended wife) of &c. and (intended wife) spinster and eldest daughter of the said (father) of the second part and (trustees) of &c. of the third part Whereas [recite the will of the grandfather] whereby among other things he devised all his manors messuages and tenements lands and hereditaments unto the said (I. H.) his grandson for life In which said will is contained a power or proviso for the said (I. H.) to charge any part or parts of the said manors lands and premises with any sum of money by way of annuity or rent-charge for the jointure of any woman he might marry but so as that such annual sum or rent-charge should not exceed £ for every £ which the said grandson should receive for the marriage portion of such woman And whereas [recite testator's death without revoking his will, and probate of the will] And whereas a marriage is intended to be shortly had and solemnized between the said (I. H.) and said (I. W.) Now this Indenture

Recital of will.

Of death of
testator.
Of contract for
a marriage.
Testatum.

No. CIX.
Of a Jointure.

Appointment
of £ as a
jointure to in-
tended wife.

witnesseth That in consideration of the said intended marriage and the sum of £ to the said (*I. H.*) in hand &c. by the said (*F. of the said I. W.*) in full for the marriage portion of the said (*I. W.*) his daughter the receipt whereof the said (*I. H.*) doth hereby acknowledge And for making such settlement jointure and provision for and upon the said (*I. W.*) as aforesaid He the said (*I. H.*) by virtue and in exercise and execution of the power and authority to him given and reserved in and by the said in part recited will and all and every other power and powers authority and authorities to him in that behalf given or any ways enabling him thereunto *Doth* by this present writing signed sealed and delivered by him the said (*I. H.*) in the presence of the two credible witnesses whose names are intended to be hereon written or indorsed as witnesses attesting the same grant limit and appoint unto the said (*I. W.*) *One* annual sum or yearly charge of £ being after the rate of £ per year for and in respect of every 100*l.* which the said (*I. H.*) hath actually received as the present portion or fortune of the said (*I. W.*) his intended wife free and clear of and from all taxes charges and deductions whatsoever parliamentary or otherwise to be issuing payable had and received out of and from and charged and chargeable upon all and singular the said manors messuages and tenements lands hereditaments &c. (*parcels*) being the same lands and hereditaments as were devised to him by the will of the said (*testator*) as aforesaid *To have* hold take and enjoy the said annual sum or yearly rent-charge of £ hereby granted limited and appointed or intended so to be unto the said (*I. W.*) and her assigns to commence in possession from and immediately after the decease of the said (*I. H.*) for and during the term of her natural life in case the said intended marriage shall take effect and she shall survive the said (*I. H.*) her said intended husband for or in nature of a jointure and in lieu bar and satisfaction of the dower freebench and thirds at common law which she the said (*I. W.*) shall or may at any time or times be entitled to or otherwise might have or claim in to or out of all and every or any of the said manors messuages or tenements lands and hereditaments whereof or whereto the said (*I. H.*) shall be seised or entitled for an estate of inheritance and to be paid to her the said (*I. W.*) and her assigns &c. And also a proportional part &c. And the said (*I. H.*) doth hereby for himself &c. [*Power of distress and entry see Grant of an Annuity, ante, pp. 189, 190, post, p. 256*]

Habendum.

Covenants for
title.

And the said (*I. H.*) doth hereby for himself his heirs executors and administrators covenant with the said (*T.*) their executors &c. in manner following (that is to say) That he the said (*I. H.*) at the time of the sealing and delivery of these presents hath good right full power and lawful authority under and by virtue of the said in part recited will to grant limit and appoint unto and to the use of the said (*I. W.*) the said annual sum or yearly rent-charge of £ and to make the same issuable out of and chargeable upon the aforesaid manors messuages lands tenements and hereditaments and premises in the manner hereinbefore expressed *And further* That the said (*I. W.*) and her assigns shall and may at all times during the term of her natural life in case the said intended marriage shall take effect and she shall happen to survive the said (*I. H.*) her intended husband peaceably and quietly have hold receive perceive take and enjoy the said annual sum or yearly rent-charge of £ so granted limited and appointed to her in jointure as aforesaid to and for her and their own proper use and benefit *And moreover* that he the said (*I. H.*) and his heirs and all other persons claiming or to claim by from or under him or them or by from or under the said (*testator*) deceased shall and will from time to time and at all times at the request of the said (*T.*) but at his and their own proper costs do all such acts and things for the further better and more perfectly granting limiting appointing and assuring unto and to the use of the said (*I. W.*) and her assigns during her life in case the intended marriage shall take effect and she shall survive the said (*I. H.*) her intended husband the said annual sum of £ hereinbefore mentioned to be hereby limited to and for her jointure as aforesaid as by the said (*T.*) or the survivor of them or the executors &c. of such survivor or his or their counsel in the law shall be reasonably advised devised or required *In witness &c.*

No. CIX.
Of a Jointure.

That husband
hath power to
appoint.

Quiet enjoy-
ment.

Further as-
surance.

—◆—
No. CX.

Appointment and Disposition by a Married Woman.

No. CX.
*Married
Woman.*

Obs. As to the disposition of property by married women, see *ante*, Pref. sect. 3.

To all Persons to whom these presents shall come (appointor) of &c. sendeth greeting *Whereas* the said (*A.*) then (*maiden name*) by indentures of lease and release bearing date respectively

Recital of set-
tlements.

No. CX.

*Married
Woman.*

the days of in consideration of a marriage then intended between the said (A.) and (*husband*) of &c. Did grant convey release and confirm unto (*trustees*) all that messuage &c. *To be holden* unto the said (T.) their heirs and assigns for ever to the use of the said (A.) until the said intended marriage should take effect and afterwards to the use of the said (H.) for the term of his natural life and after his decease to the use of the said (A.) for the term of her natural life without impeachment of waste with remainder to &c. in trust for &c. *And* from and after the end or other determination of the said term of &c. to the use of the heirs of the body of the said (A.) by the said (H.) lawfully begotten *And* for default of such heirs to the use of such person and persons as the said (A.) with or without the consent of the said (H.) by any writing under her hand and seal and attested by two or more credible witnesses or by her last will and testament in writing should direct limit or appoint the same and in default of such direction limitation and appointment as aforesaid or so far as the same should not extend to the use of the said (H.) his heirs and assigns for ever *And whereas* the said marriage did afterwards take effect and the said (A.) hath not yet had nor is there any likelihood of her having any child or children of her body by the said (H.) *Now know ye* That the said (A.) in pursuance of the power to her reserved and given in and by the said in part recited indenture of release doth by this present writing signed sealed and delivered by her in the presence of the two credible persons whose names are hereupon indorsed as witnesses attesting the signing sealing and delivery of these presents *Doth* limit direct and appoint that all and singular the said premises hereinbefore mentioned to be comprised in the said in part recited indenture with the appurtenances shall from and after the several deceases of them the said (H.) and the said (W.) and the failure of the issue of the said (W.) by the said (H.) go remain and be to the use and behoof of &c. his heirs and assigns for ever and to and for no other use intent or purpose whatsoever *Provided nevertheless* That these presents shall not nor shall any thing herein contained extend or be construed to extend to the prejudice of any issue of the said (W.) by the said (H.) in case such issue shall happen to be hereafter born *In witness* &c.

Marriage.

Appointment.



No. CXI.

*Appointment by a Mother in Favour of her Son under a Power
in an Act of Parliament.*

No. CXI.
By a Mother.

To all to whom &c. [see last precedent] I (*appointor*) widow and relict of W. B. of &c. send greeting Pursuant to and by virtue and in exercise and execution of the power and authority to me for that purpose given or limited or in me vested by an act of parliament made and passed in the year of the reign of her present Majesty intituled “An Act for discharging the uses and trusts of certain manors &c. settled upon and for the use of W. B. and M. his wife” &c. and of every other power or authority whatsoever in anywise enabling me in this behalf I the said (*appointor*) Do by this deed or writing under my hand and seal executed by me in the presence of the three persons whose names are intended to be indorsed hereon as witnesses to my signing sealing and delivering these presents limit direct and appoint that all the manors or reputed manors of C. in the county of B. and all and every the messuages farms lands tenements and hereditaments situate lying and being in or some or one of them in the said act particularly mentioned [save and except the messuages &c. now in the occupation of or either of them or either of their assigns or undertenants] with their and every of their respective rights members and appurtenances shall after the decease of me the said (*appointor*) be and remain *To and for* the sole and proper use and behoof of my eldest son W. B. his heirs and assigns for ever and to and for no other use intent or purpose whatsoever *Subject* nevertheless and without prejudice to a certain term of 500 years for which I the said (*appointor*) by a deed poll bearing date &c. have limited and appointed among other hereditaments the said manors and premises hereby limited with their respective appurtenances to my daughter S. now the wife of S. G. lieutenant in her Majesty’s regiment &c. and also subject and without prejudice to the sum of £ secured by the said term and the interest thereof. *In witness* &c.

Recital of act
of parliament.

Appointment
by mother.

Subject to term
of 500 years.



No. CXII.

Of Stock.

No. CXII.

Appointment of a Portion in exercise of a Power contained in a Marriage Settlement.

To all to whom these presents shall come A. of &c. and B. his wife send greeting

Recitals.

Whereas [recite settlement of funds to A. for life remainder to B. for life remainder to their children as A. and B. his wife should jointly appoint with power for trustees of the settlement by the direction of A. and B. his wife to transfer the portions of children during their lifetime] And whereas the sum of

Appointment of part of trust fund.

Three per Cent. Consolidated Bank Annuities part of the stocks funds and securities mentioned in the said recited indenture of settlement is now standing in the names of the said (trustees) in the proper books of the Bank of England subject to the trusts of the said recited indenture of settlement And whereas the said A. and B. his wife are desirous in execution of the power in that behalf given to them by the said in part recited indenture of settlement to appoint the said Three per Cent. Consolidated Bank Annuities unto (daughter) one of the children of the said A. and B. his wife as and for her part share and proportion of the said trust monies stocks funds and securities in the manner hereinafter mentioned Now know ye and these presents witness That the said A. and B. his wife in pursuance and in execution of the power or authority given to them in this behalf by the said hereinbefore recited indenture of settlement and by force and virtue of all and every other powers and authorities power and authority in anywise enabling them in this behalf do by this present deed or writing under their hands and seals signed sealed and delivered by them in the presence of and attested by the two credible persons whose names are intended to be hereon indorsed as witnesses to the execution thereof by them the said A. and B. his wife jointly direct limit and appoint That the said sum of Three per Cent. Consolidated Bank Annuities shall be the part share and proportion of the said (daughter) of and in the trust monies mentioned in the said hereinbefore in part recited settlement and of the respective stocks funds and securities upon or in which the same are or shall be invested And these presents further witness and they the said A. and B. his wife do by this writing under their respective hands and seals testify and declare their consent and approbation And further direct and

Direction to transfer immediately.

appoint that they the said (*trustees*) or the survivor of them his executors administrators or assigns notwithstanding the life interest of the said A. and B. his wife and of the survivor of them do and shall forthwith transfer and assign the whole of the said Three per Cent. Consolidated Bank Annuities herebefore appointed as and for the part share and proportion of her the said (*daughter*) of and in the aforesaid trust monies stocks funds and securities unto her the said (*daughter*) her executors or administrators or to such person or persons as she shall by writing under her hand direct and appoint *In witness &c.*

No. CXII.
Of Stock.

No. CXIII.

Appointment of Money to be paid by Trustees to Bankers to be drawn for by a Married Woman for her separate Use or received by her.

No. CXIII.
Of Money to be paid to Bankers.

To all to whom these presents shall come or be shown (husband) of &c. and B. his wife formerly (maiden name) spinster severally send greeting

Whereas [recite settlement] And whereas the said legacy of Recitals.
£ with a small arrear of interest thereon is forthwith to be received by the said (*trustees*) upon under and subject to the trusts declared and expressed in and by the said hereinbefore in part recited indenture of settlement *And whereas the said (wife) is desirous that the said sum of £ and the interest due and to become due for the same should be paid into the bank of bankers and copartners subject to the order and disposition of the said (W.) notwithstanding her coverture and the said (H.) hath agreed to join with her in appointing the said sum of £ and the interest due and to become due for the same to be paid into the bank of the said subject to such order of the said (W.) as aforesaid.*

Now know ye That for divers good causes and considerations Appointment.
the said (*H.*) thereunto especially moving and by virtue and in pursuance and exercise of the power or authority given limited or reserved to the said (*H.*) and B. his wife jointly as aforesaid in and by the said in part recited indenture of settlement and by virtue and in exercise and execution of all and every power and powers authority and authorities enabling him the said (*H.*) and B. his wife jointly and the said (*W.*) solely in this behalf they

No. CXIII. the said (*H.*) and B. his wife by this their deed or instrument in writing signed sealed and delivered by them in the presence of two credible witnesses and to be attested by the same witnesses do jointly direct and appoint *And* the said (*W.*) by this her deed note or instrument in writing under hand and signed sealed and delivered by her and to be attested as aforesaid doth direct and appoint that the said (*T.*) or the survivor of them or the executors administrators or assigns of such survivor do and shall forthwith or as soon as conveniently may be after the said legacy or sum of £ and the interest due and to become due for the same shall be paid to them or him pay the same legacy or sum of £ and the interest due and to become due for the same in the meantime till such payment into the bank of the said to the credit of an account to be opened and to be kept with the said *To the intent* that the same principal sum of £ and interest shall be at the disposal of the said (*W.*) in the same manner to all intents and purposes as if she was sole and unmarried without any control or interference by or on the part of the said (*H.*) and so and in such manner that payments to the said (*W.*) personally with or without any writing or any other disposition of the same principal &c. or any part thereof pursuant to the order banking cheques bills of exchange deeds wills or any other writing under the hand of the said (*W.*) may be effectual discharges to the said their executors &c. or any of them for so much and such parts thereof as shall be paid as aforesaid *And* the said (*bankers*) their executors &c. shall not be obliged or required to see to the application or be answerable or accountable for the misapplication or nonapplication of the monies to be paid to or to the order of the said (*W.*) as aforesaid *And* moreover that on payment of the said sum of £ &c. into the said bank of or the survivor or survivors of them and notwithstanding the death of any one or more of the said partners or the admission of any other person or persons into the partnership in the meantime the said (*T.*) their heirs executors administrators and assigns shall be acquitted and discharged of and from any other or further payment of the same principal &c. which shall be paid by them or him in pursuance of these presents and also of and from the trusts by the said recited settlement and hereby respectively declared concerning the same or any liability for the misapplication or nonapplication of the same or any part thereof *In witness* &c.



No. CXIV.

No. CXIV.
Of Money.*Appointment and Disposition of Money by a Married Woman.*

To all &c. [see last precedent] Whereas in and by certain articles of agreement bearing date &c. and made between &c. reciting among other things That there was a marriage intended to be had between the said (*Appointor*) and (*Husband*) of &c. And that (*Trustees*) were possessed of and interested in a mortgage made by &c. *In trust* for the said (*A.*) he the said (*H.*) did thereby covenant and agree with the said (*T.*) that they the said (*T.*) should from thenceforth stand possessed of and interested in the said sum of £ owing by the said (*mortgagor*) and in the mortgaged lands whereby the same was secured upon the trusts and to and for the intents and purposes following (that is to say) *In trust* That they should receive the interest thereof and pay the same into the hands of the said (*A.*) for her separate use and that the said (*H.*) should have nothing to do therewith And further that the said (*A.*) might during her life or by her last will or by any other writing whether she should be sole or under coverture without the consent of the said (*H.*) give and dispose of the said sum of £ or any part thereof to such person and persons and in such manner and form as she should think fit And whereas the said (*A.*) hath since intermarried with the said (*H.*) and hath received all the interest of the said sum of £ until the day of the date hereof and the said (*mortgagor*) hath also paid in the said principal sum of £ Now &c. [see last precedent] that the said (*A.*) by virtue &c. doth hereby dispose direct and appoint the said (*T.*) to pay £ part of the above-mentioned sum of £ unto &c. and the sum of £ being the residue thereof unto &c. And the said (*A.*) doth hereby declare that such payments to the said &c. with each of their receipts respectively shall be as effectual and full discharges as though the said £ was actually paid to and received by herself *In witness* &c.

Recital of a conveyance to trustees of a mortgage to the use of wife.

Wife to appoint.

Testatum.

No. CXV.

No. CXV.
To raise Portions.*Appointment in pursuance of a Power to Trustees for a Term for raising Portions for younger Children.*

This Indenture made &c. Between T. D. of &c. of the first part A. D. spinster eldest daughter of the said T. D. of the second

No. CXV.
To raise
Portions.

Recital of
power.

part and (*Trustees*) of &c. of the third part *Whereas* by an indenture of release dated grounded on a lease for a year and made between and by a common recovery duly suffered in pursuance thereof in or as of term *All* &c. (*description of parcels*) with the appurtenances were conveyed and assured and by the said indenture limited to the use of A. B. and his assigns for his life with remainder to the use of the said T. D. and his assigns for his life with divers remainders over *And* it was by the said indenture declared that the said T. D. might when entitled to the possession or to the receipt of the rents and profits of the hereditaments thereby limited by any deed or deeds to be by him executed in the presence of and attested by two or more credible witnesses or by will or codicil charge all or any part of the same hereditaments with the payment of any sum or sums not exceeding the sum of £ for the portion or portions of his child or any of his children other than an eldest or only son to be an interest vested or interests vested and to be paid to or among such child or children or any one or more of them in such shares at such time or times and in such manner as the said T. D. should appoint *And also* that the said T. D. might by the same or any other deed or deeds or by will or codicil appoint the hereditaments so to be charged to any person or persons for any term or terms of years upon trust by sale or mortgage of the hereditaments so to be appointed or any part thereof for all or any part of the said term or terms or by any other ways or means to raise the sum or sums of money so to be appointed with interest for the same until raised at any rate not exceeding 5*l.* per cent.

Death of A. B. per annum *And whereas* the said A. B. died several years ago *And whereas* the said T. D. is desirous of executing the power limited to him by the said recited indenture of charging the said premises with the payment of the said sum of £ and hath agreed to limit the sum of £ being a moiety or half part of the said sum of £ to be paid to the said A. D. as and for her share or proportion of the said sum of £ as hereinafter is expressed *Now this Indenture witnesseth* That in pursuance and part performance of the aforesaid agreement in this behalf and by force and virtue and in exercise and execution of the power or authority to the said T. D. given limited or reserved by the said recited indenture as aforesaid and all and every other power &c. in anywise enabling him in this behalf He the said T. D. by this deed in writing duly executed by him in the presence of and attested by the two credible persons whose

Testatum.

names are intended to be hereon indorsed as witnesses to the execution of these presents by him the said T. D. *Doth charge All those manors messuages lands and hereditaments comprised in the said indenture of* with the payment of the sum of £ for the portions and maintenance of all and every the child and children of the body of him the said T. D. begotten and to be begotten [other than and except an eldest or only son] *And this Indenture further witnesseth* That in further pursuance &c. and for the better securing the payment of the said sum of £ He the said T. D. by force and virtue and in further execution of the said power and of every other power in any-wise enabling him in this behalf doth by this deed so executed and attested as aforesaid appoint that *All and singular* the said manors messuages lands and hereditaments hereinbefore particularly mentioned and described and by these presents charged with the payment of the said sum of £ or intended so to be with their and every of their rights members and appurtenances shall from henceforth go remain and be to the use of the said (T.) their executors administrators and assigns for and during and unto the full end and term of 1000 years fully to be complete and ended without impeachment for any manner of waste But nevertheless upon the trusts and for the intents and purposes and under and subject to the proviso and condition hereinafter declared and contained of and concerning the same (that is to say) *Upon trust* that the said (T.) or the survivor of them his executors administrators or assigns do and shall by mortgage sale demise or disposition of the said manors and premises comprised in the said term or any part thereof for all or any part of the said term or by with or out of the rents issues or profits of the said premises or any part thereof or by bringing actions against all or any of the tenants or occupiers of the said premises for recovery of the rents in arrear or by all or any of the aforesaid ways and means or by any other ways or means whatsoever as they the said (T.) or the survivor &c. shall think fit levy raise and pay the said sum of £ for the portions &c. [other than and except an eldest or only son] and do and shall pay the sum of £ [being a moiety &c. of the said sum of £] to the said A. D. or her assigns on the day of this present month in full of her part share and proportion of the said sum of £ and do and shall by the ways and means aforesaid levy raise and pay the sum of £ the remainder of the said sum of £ with interest thereon at the rate of £ per cent. per

No. CXV.

*To raise
Portions.*Execution of
the power.Further testa-
tum.Demise to
trustees.Term of 1000
years.

No. CXV.

*To raise
Portions.*Proviso for
cesser of term.Covenant to
pay interest,
&c.

annum to all and every the child &c. [other than and except an eldest or only son and also other than and except the said A. D.] at such time or times in such parts &c. as the said T. D. by any deed or deeds in writing with or without power of revocation to be by him sealed &c. shall direct limit or appoint *Provided nevertheless* and it is hereby declared and agreed by and between the said parties to these presents that if the said T. D. or other the person or persons for the time being entitled to the remainder or reversion of the manors &c. comprised in the said term immediately expectant on the determination of the same term or any of them do and shall well and truly pay or cause to be paid to the said A. D. her executors administrators or assigns the sum of £ with interest for the same at the rate aforesaid and do and shall pay or cause to be paid to the said (T.) or the survivor &c. or well and sufficiently to their or his good liking secure to be paid the said sum of £ the remainder &c. for the portions of all &c. [other than &c. and also other than and except the said A. D.] at such time &c. as shall be directed by the same T. D. as aforesaid *And* in case they the said (T.) and each of them and the executors &c. of each of them shall be fully reimbursed and satisfied all costs charges and expenses occasioned by or relating to the trusts hereby in them reposed and which it shall be lawful for them respectively to deduct and retain out of the rents issues and profits of the said premises *Then* and from thenceforth the said term of &c. of and in the said manors &c. therein comprised or so much thereof respectively as shall remain unsold or undisposed of for the purposes aforesaid shall cease determine and be utterly void to all intents and purposes whatsoever anything hereinbefore contained to the contrary thereof in anywise notwithstanding *And* the said T. D. for himself his heirs executors and administrators doth covenant with the said (T.) their executors administrators and assigns by these presents in manner following (that is to say) That he the said T. D. or other the person or persons who for the time being shall be entitled to the remainder or reversion of the said premises expectant as aforesaid shall and will from time to time pay and keep down all interest after the rate aforesaid which shall occur or become payable for or in respect of the said sum of £ so hereby directed to be paid to the said A. D. from the said day &c. until the last-mentioned sum of £ shall be raised and paid to the said A. D. and shall and will also pay the said sum of £ the remainder of the

said sum of £ with interest for the same after the rate aforesaid from such time as the same or any part or parts thereof shall become due and payable by virtue of any direction limitation or appointment to be made by him the said T. D. *Provided nevertheless* that if the said T. D. his executors or administrators shall pay the said principal sums of £ and £ or any part thereof respectively under the preceding covenant it shall be lawful for him or them to require an assignment or transfer of the said mortgaged premises for the then residue of the term hereby granted to be made to a trustee for him or them for securing the money to be paid by him or them with interest at the rate aforesaid for the same yet nevertheless that the said T. D. shall be bound to pay and keep down such interest during his life *And* also that he the said T. D. now hath good right full power and lawful and absolute authority to charge the said hereinbefore mentioned manors and premises with the payment of the aforesaid sum of £ part of the said sum of £ to be paid to the said A. D. her executors administrators or assigns as aforesaid and that all and singular the said manors &c. shall remain continue and be subject unto and charged and chargeable with the payment of the said sum of £ and the interest thereof in manner aforesaid and according to the true intent and meaning of these presents *And* that free and discharged or otherwise by the said T. D. his heirs executors or administrators sufficiently indemnified from and against all estates incumbrances claims and demands whatsoever *And further* that the said T. D. or his heirs and all and every other person or persons who now have or claim or who shall or may have or claim any estate &c. shall and will from time to time and at all times hereafter upon every reasonable request to be made for that purpose but at the proper costs and charges in the law of the said T. D. or other the person or persons for the time being entitled to the remainder or reversion of the said premises expectant as aforesaid make do and execute or cause to be made done or executed all and every such further and other lawful or reasonable act or acts &c. for the better more perfectly and absolutely subjecting and charging the said manors and other hereditaments hereby charged or intended so to be and every of them and every part thereof with the payment of the said sum of £ and interest thereof respectively and for the better limiting and appointing the said sum of £ and the interest thereof respectively as aforesaid to be paid to the said A. D. her executors administra-

No. CXV.

*To raise
Portions.*

Proviso.

Covenants for title.

Good right to charge premises.

Free from incumbrances.

For further assurance.

No. CXV.
*To raise
 Portions.*

tors and assigns in manner hereinbefore mentioned according to the true intent and meaning of these presents *In witness &c.*



No. CXVI.

No. CXVI.
*Annuity and
 Portion.*

Appointment of an Annuity and Portion by a Father in favour of his Daughter on her intended Marriage.

This Indenture made &c. between (father) of &c. of the first part (intended wife) of &c. the second daughter of the said (F.) of the second part (intended husband) of the third part A. and B. (two trustees) of the term for securing the annuity of the fourth part C. and D. (two trustees) for securing the portion of the fifth part and E. and F. (two trustees) of the annuity for intended wife's separate use of the sixth part Whereas &c. [Recital of settlement under which the father was tenant for life with remainder in strict entail Power for father to charge portions in favour of each of his daughters with power to create term for raising same by mortgage &c. Power for father to limit to each of his daughters any annual sum or rent-charge not exceeding £ for each daughter for life to be charged on settled estates with powers of distress and entry and to limit term to any persons for better securing the payment thereof] And whereas a marriage hath been agreed upon and is intended to be shortly had and solemnized between the said (I. H.) and (I. W.) with the privity and approbation of the said (father) testified by his being a party to and sealing and delivering these presents And whereas upon the treaty for the said intended marriage the said (father) did agree that in exercise of the powers to him for this purpose given or limited by the said indenture of settlement He the said (father) would limit an annual sum or yearly rent of £ to the said (I. W.) and her assigns to be charged and to be paid to her and to them during her natural life And that the said (father) would previously to the said intended marriage charge the same manors and other hereditaments with the payment of the sum of £ to and for the portion of her the said (I. W.) to be paid and payable immediately on the solemnization of the said intended marriage And it was upon the same treaty agreed that the said annual sum or yearly rent of £ and the said sum of £ should be assigned and made payable to trustees on the trusts hereinafter expressed and contained of and con-

Recitals.

cerning the same *Now therefore this Indenture witnesseth* That in pursuance of the said agreement so far as relates to his the said (*father*) exercising in manner hereinafter mentioned the power of limiting the annual sum or yearly rent-charge of £ to the said (*I. W.*) and her assigns and in consideration of the said intended marriage and pursuant to and by force and virtue and in part exercise and execution of the power and authority of the said (*father*) for this purpose by the said hereinbefore in part recited indenture of settlement given or limited as hereinbefore is mentioned and of every other power or authority enabling him in this behalf *He* the said (*father*) doth by this deed or instrument in writing by him sealed and delivered in the presence of and attested by the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivery of these presents by him the said (*father*) absolutely and irrevocably limit and appoint unto the said (*I. W.*) in case the said intended marriage shall take effect and to her assigns for and during the term of her natural life One annual sum or yearly rent-charge of £ of lawful money of Great Britain to be issuing and payable out of and charged and chargeable upon all and every the manors or lordships advowsons rectories messuages or tenements farms lands and other hereditaments situate lying and being in the said county of which by the said recited indenture of settlement were appointed granted and released or otherwise assured to the uses in the same indenture expressed and contained of and concerning the same with the rights members royalties and appurtenances thereof and out of and upon their respective rights members and appurtenances *To have* hold receive and take the said annual sum or yearly rent-charge of £ unto her the said (*I. W.*) (in case the said intended marriage shall be had and solemnized) and her assigns for and during the term of her natural life and to be paid to her the said (*I. W.*) and her assigns by four even and equal quarterly payments in every year without any deduction or abatement whatsoever from or out of the same or any part thereof for or in respect of any taxes charges assessments or impositions whatsoever either already or hereafter to be taxed charged assessed or imposed on the manors and other hereditaments hereby charged with the payment of the same or any of them or any part thereof respectively or on the said annual sum or yearly rent-charge of £ or any part thereof or on the said (*I. W.*) or her assigns or any other person or per-

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*Annuity and
Portion.*Appointment
of annuity.Habendum to
daughter for
life.

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*Annuity and
 Portion.*

Power of dis-
 tress.

sons whomsoever by authority of Parliament or otherwise howsoever the first quarterly payment of the said annual sum or yearly rent-charge of £ to be made at the expiration of three calendar months to be computed from the day of the solemnization of the said intended marriage *And further* that in case the said annual sum or yearly rent-charge of £ or any part thereof shall at any time hereafter be in arrear and unpaid by the space of twenty-one days next after any of the days hereinbefore appointed for the payment of the same *Then* in that case and so often as the same shall happen it shall be lawful for the said (*I. W.*) and her assigns to enter into and distrain for the said annual sum or yearly rent of £ or the amount of the then arrear of the same upon the said manors and other hereditaments hereinbefore charged with the same or any part or parts thereof and to dispose of the distress or distresses then and there found according to law as in the case of distress taken for rent reserved on common demises or leases for years *To* the intent that thereby the said (*I. W.*) and her executors administrators or assigns shall and may be fully paid and satisfied the said annual sum or yearly rent-charge of £ and every part thereof and all costs charges and expenses occa-

Power of entry.

sioned by the nonpayment thereof *And also* that in case the said annual sum or yearly rent-charge of £ or any part thereof shall at any time or times be behind or unpaid by the space of forty days next after any of the days hereinbefore appointed for the payment of the same *Then* and in such case and so often as the same shall happen it shall (although no legal demand shall have been made thereof) be lawful for the said (*I. W.*) and her assigns during the term of her natural life and also for her executors administrators or assigns after her decease to enter into and upon all and singular the manors and other hereditaments hereinbefore charged with the said annual sum or yearly rent-charge of £ or any part or parts thereof and to have hold and receive the rents issues and profits thereof to her and their own use and benefit until she or they respectively shall therewith and thereby be fully paid and satisfied the said annual sum or yearly rent-charge of £ and all arrears thereof which shall be due at the time of such entry or which shall afterwards grow due during her or their being in possession of the same hereditaments or any part thereof *Together* with all costs charges and expenses which she or they shall incur or be put unto for recovering and enforcing payment of the same and

such possession when taken to be without impeachment of waste *And it is* hereby agreed and declared between and by the parties to these presents that immediately after the execution of this present indenture the said (*I. W.*) shall by an indenture which is already prepared and engrossed and indorsed on this present indenture and which is intended to bear date the day next after the day of the date hereof and to be made between the same persons as are parties hereto grant bargain sell and assign or otherwise well and effectually assure and confirm the said annual sum or yearly rent-charge of £ to the use of the said E. and F. their heirs and assigns upon such trust for the separate use and benefit of the said (*I. W.*) as in the same indenture are or shall be expressed of and concerning the same *And this Indenture further witnesseth* That in pursuance and part performance of the said agreement so far as respects the said annual sum or yearly rent-charge of £ and for further and better securing the payment of the same and for the considerations hereinbefore mentioned and pursuant to and by force and virtue and in exercise and execution of the power or authority to him the said (*father*) for this purpose given or limited by the said hereinbefore in part recited indenture of appointment release and settlement and of all and every other powers or authorities power or authority in anywise enabling him in this behalf he the said (*father*) doth by this deed or instrument in writing by him sealed and delivered and intended to be attested as hereinbefore is mentioned limit and appoint that all and singular the manors and other hereditaments hereinbefore charged with the payment of the said annual sum or yearly rent-charge of £ in favour of the said (*I. W.*) and her assigns and every part and parcel of the same manors and hereditaments with their rights members and appurtenances shall from and immediately after the solemnization of the said intended marriage (but subject and charged with the said annual sum or yearly rent-charge of £ and the powers and remedies hereinbefore limited and provided for securing the payment thereof) be and remain to the use of the said A. and B. their executors administrators and assigns for and during and unto the full end and term of 200 years to commence and be computed from the day of the solemnization of the said intended marriage and thenceforth next ensuing and fully to be complete and ended without impeachment of waste but upon the trusts and subject to the proviso hereinafter expressed and contained of and concerning the same

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Annuity and Portion.

Declaration as to assignment of annuity.

Limitation of term of years to trustees to secure annuity.

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*Annuity and
 Portion.*

(that is to say) *In trust* to permit the person or persons entitled for the time being to the said manors and other hereditaments in remainder or reversion immediately expectant upon the determination of the said term of 200 years to receive and take the rents issues and profits of the said manors and other hereditaments until the said annual sum or yearly rent-charge of £ or some part thereof shall be in arrear and unpaid by the space of sixty days next after the same ought to be paid as aforesaid *And* in case and so often as the same annual sum or yearly rent-charge or any part thereof shall be in arrear and unpaid by the said space of sixty days then and so often as the same shall happen (although no formal demand shall have been made of the said annual sum or yearly rent-charge or the arrears thereof) *Upon trust* that the said A. and B. or the survivor of them or the executors administrators and assigns of such survivor do and shall by and out of the rents and profits of the said manors and other hereditaments or by demising leasing mortgaging or selling the same for all or any part of the said term of 200 years or by bringing actions against the tenants or occupiers of the premises for the recovery of the rents then in arrear or by more than one of or by all the ways and means hereinbefore mentioned or by any other reasonable ways and means raise and pay to the said (I. W.) and her assigns all the arrears of the said annual sum or yearly rent-charge of £ and all such costs charges damages and expenses as the said (I. W.) and her assigns or the said A. and B. or the survivor of them or the executors administrators or assigns of such survivor shall sustain expend or be put unto by reason of the nonpayment thereof and do and shall pay the surplus if any of the monies raised by the ways and means aforesaid to the person or persons who for the time being shall be entitled to the said manors and other hereditaments in remainder or reversion immediately expectant on the determination of the said term of 200 years to and for his and their own use and benefit *Provided always* and it is hereby agreed and declared between and by the parties to these present That when all and every the trusts of the said term of 200 years shall be fully performed or shall become unnecessary or incapable of taking effect and when the said A. and B. their executors administrators and assigns shall be paid and satisfied all costs charges damages and expenses which they or any of them shall bear pay incur or be put unto by reason or on account of the execution of the trusts hereby in them reposed or in anywise relating

Proviso for
 cesser of term.

thereto (which costs and expenses may be raised by all or any of the means aforesaid) the said term of 200 years shall (but subject and without prejudice to any disposition which shall have been made of the same in exercise of the trusts hereinbefore expressed and contained) cease determine and be void
And this Indenture further witnesseth That in pursuance and further performance of the said agreement so far as the same relates to the said sum of £ agreed by the said (*father*)

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*Annuity and
 Portion.*

Appointment
 of portion to be
 charged on
 estate.

to be charged by him for the portion of the said (*J. W.*) in exercise of the power of charging with portions to the said (*father*) given or limited by the said recited indenture of settlement and for the considerations hereinbefore mentioned and pursuant to and by force and virtue and in part exercise and execution of the said last-mentioned power and of every other power or authority enabling the said (*father*) in this behalf he the said (*father*) doth by this deed or instrument in writing by him sealed and delivered and so intended to be attested as hereinbefore is mentioned (but subject and without prejudice as hereinbefore is mentioned) *Subject and charge* the manors and other hereditaments hereinbefore charged or intended so to be with the said annual sum or yearly rent-charge of £ with their rights members appurtenances and the reversion and reversions remainder and remainders yearly and other rents issues and profits thereof and of every part and parcel thereof to and with the payment of the said sum of £ of lawful money of Great Britain to the said (*J. W.*) and to be an interest vested in her the said (*J. W.*) immediately upon or after the solemnization of the said intended marriage and to be from thenceforth attended with interest after the rate of £5 for every hundred by the year to be paid by two even and equal half-yearly payments in every year the first half-yearly payment of the same to be made at the expiration of six calendar months next after the solemnization of the said intended marriage *And* it is hereby agreed and declared between and by the parties to these presents that immediately or as soon as lawfully may be after the sealing and delivery of these presents the said (*J. W.*) shall by the said indenture hereinbefore mentioned to be already prepared and engrossed and to be endorsed on this present indenture assign the said sum of £ and the interest thereof to the said C. and D. their executors administrators and assigns upon the trusts hereinafter expressed and contained of or concerning the same *And this Indenture also witnesseth* That in pursuance

Declaration as
 to assignment
 of portion to
 trustees.

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*Annuity and
Portion.*Limitation of
term of years
to receive por-
tion.

and further performance of the said agreement and for further securing the said sum of £ and facilitating the raising and levying of the same and for the considerations hereinbefore mentioned and pursuant to and by force and virtue and in part exercise and execution of the power or authority to him the said (*father*) for this purpose given or limited by the said recited indenture of settlement and of every other power and authority in anywise enabling him in this respect he the said (*father*) doth by this deed or instrument in writing so by him sealed and delivered and so intended to be attested as aforesaid irrevocably direct limit and appoint that from and immediately after the solemnization of the said intended marriage *All* and singular the manors and other hereditaments hereinbefore charged with the said sum of £ with their rights members and appurtenances shall (but subject and without prejudice as hereinbefore is mentioned) be and remain to the use of the said C. and D. their executors administrators and assigns for and during and unto the full end and term of 600 years to commence and be computed from the day of the solemnization of the said intended marriage and thenceforth next ensuing and fully to be complete and ended without impeachment of waste upon the trusts and subject to the proviso hereinafter expressed and contained of and concerning the same (that is to say) *Upon trust* that the said C. and D. and the survivor of them and the executors administrators and assigns of survivor do and shall by mortgage sale or any other disposition of the said manors and other hereditaments comprised in the said term of 600 years or any of them or any part thereof for all or any part of the same term levy and raise the said last-mentioned sum of £ and the interest of the same and stand and be possessed of and interested in the same sum of £ and the interest thereof upon and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations herein-after expressed and declared of and concerning the same *And upon this further trust* that they the said C. and D. and the survivor of them and the executors administrators and assigns of such survivor shall from time to time pay the yearly rents issues and profits of the said hereditaments or so much or such part of the said rents issues and profits as shall from time to time remain after and not be applied upon or for answering all or any of the trusts and purposes aforesaid unto or permit the same to be received by the person or persons for the time being entitled

to the said manors and other hereditaments in remainder or reversion immediately expectant on the said term of 600 years for his and their proper use and benefit *Provided always* and it is hereby agreed and declared between and by the parties to these presents That when the trusts hereinbefore declared of the said term of 600 years shall be fully performed and satisfied and the said C. and D. and each of them and their and each of their executors administrators and assigns shall be fully paid and satisfied all costs charges and expenses which they shall have incurred or be put unto in the execution of the trusts hereby in them reposed the said term of 600 years shall (but subject and without prejudice to any disposition which shall have been made of the same for answering all or any of the trusts and purposes aforesaid) cease determine and be void *And* for declaring the trusts of the said sum of £ hereinbefore charged and directed to be raised under the trusts of the said term of 600 years as hereinbefore is mentioned *This Indenture further witnesseth* and it is hereby agreed and declared by and between the parties to these presents That the said C. and D. and their executors administrators and assigns shall stand and be possessed of and interested in the said sum of £ and the interest of the same upon and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations hereinafter expressed and declared of and concerning the same (that is to say) *Upon trust* that they the said C. and D. and the survivor of them and the executors administrators and assigns of such survivor shall call in and receive the said sum of £ as and when the same shall become payable and lay out and invest the same respectively in their or his names or name in the purchase of a competent share or competent shares of the parliamentary stocks or public funds of Great Britain or at interest upon government or freehold or copyhold securities in England or Wales but not in Ireland and from time to time alter vary and transpose the same and the produce of the same for or into other stocks funds or securities of a like nature *And* it is hereby further agreed and declared between and by the parties to these presents that every such laying out investment alteration variation and transposition as shall be made in pursuance of the power hereinbefore for that purpose contained shall during the joint lives of them the said (I. H.) and (I. W.) be made with the consent of both of them the said (I. H.) and (I. W.) testified by some writing under both their hands and shall after

No. CXVI.

*Annuity and
Portion.*

Proviso for
cesser of term.

Declaration of
trusts of por-
tion.

No. CXVI.

*Annuity and
Portion.*Declaration as
to postpone-
ment to raise
portion.

the decease of either of them be made with the consent of the survivor of them to be testified by some writing under his or her hand *Provided always* and it is hereby agreed and declared between and by the parties to these presents That until some one of the portions intended to be hereby provided for the daughters and younger sons of the said (*I. H.*) and (*I. W.*) shall become vested and payable by virtue of these presents it shall not be lawful for the said C. and D. or the survivor of them or the executors administrators or assigns of such survivor to call in or require payment of the sum of £ hereby charged by the said (*father*) on his said real estates or to require or enforce the levying and raising of the same but nevertheless it shall be lawful for the said (*father*) or other the person for the time being entitled to the actual freehold of the said estates at any time before the said sum of £ shall become raiseable and payable under the trusts aforesaid (giving six months' previous notice of his intention so to do) to pay in the said sum of £ or any part thereof (but not less than the sum of £ at any one payment) to the said C. and D. their executors administrators or assigns *And* it is hereby agreed and declared between and by the parties to these presents that the said C. and D. their executors administrators and assigns shall stand and be possessed of the said sum of £ and the stocks funds and securities upon which the same shall or may be invested and the interest dividends and annual proceeds thereof upon and for the trusts intents and purposes hereinafter expressed and declared of and concerning the same (that is to say) *To pay interest to (I. H.) during joint lives of (I. H.) and (I. W.) remainder to survivor for life remainder for benefit of children* See *post*, TRUSTS, SETTLEMENTS, *trustees' receipts to be good discharges* *And* the said (*father*) doth hereby for himself his heirs executors and administrators covenant with the said A. and B. their executors administrators and assigns and also as a separate covenant with the said C. and D. their executors administrators and assigns in manner following (that is to say) *That* the said powers and authorities to him the said (*father*) given or limited by the said recited indenture of settlement are respectively at the time of the sealing and delivery of these presents good valid and subsisting powers and authorities and that they or any of them are not and is not suspended extinguished or become void or voidable *And* that he the said (*father*) hath in himself at the time of the sealing and delivery of these pre-

Covenants by
father.That powers
are subsisting.Good right to
charge.

sents good right full power and lawful and absolute authority to limit the said annual sum or yearly rent-charge of £ to the said (I. W.) and her assigns for and during the term of her natural life with such powers and remedies for recovering and compelling payment thereof as hereinbefore is mentioned *And also* to subject and charge the said manors and other hereditaments with the payment of the said sum of £ and the interest thereof in manner aforesaid and according to the true intent and meaning of these presents *And also* to limit and appoint the said manors and other hereditaments for the said several terms of 200 years and 600 years respectively in manner aforesaid and according to the true intent and meaning of these presents *And* that he the said (*father*) shall and will from time to time and at all times hereafter upon the request of the said trustees or either or any of them or either or any of their executors administrators or assigns make do and execute or cause or procure to be made done and executed all and every such further and other lawful and reasonable acts deeds matters and things for the better and more effectually limiting assuring and confirming the said annual sum or yearly rent-charge of £ unto the said (I. W.) and her assigns for and during the term of her natural life as hereinbefore is mentioned *And also* for the better and more effectually subjecting and charging the said manors and other hereditaments with the payment of the said sum of £ and the interest thereof in manner aforesaid and according to the true intent and meaning of these presents *And also* for the further and more effectually limiting and appointing the said manors and other hereditaments unto the said A. and B. and C. and D. and their respective executors administrators and assigns for the residue which shall be then to come and unexpired of the said terms of 200 years and 600 years respectively as by the respective trustees of the said terms or any of them their or any of their executors administrators or assigns or any of the parties interested in the premises their or any of their counsel learned in the law shall be reasonably advised or devised and required [*Powers for the appointment of new trustees and for the indemnity of trustees, &c.*]

In witness &c.

No. CXVI.
*Annuity and
Portion.*

To limit terms
of years.

For further as-
surance.



No. CXVII.

No. CXVII.

*Annuity and
Portion.**Assignment of an Annuity and the Sum of £ in pursuance
of the preceding Deed and upon the Trusts declared by that Deed.*Assignment of
annuity to
trustees for
separate use of
wife.

This Indenture made &c. between (the same parties as to the last deed) (see ante, p. 254) Witnesseth that in pursuance of the agreement and for the consideration mentioned in the within written indenture and also in consideration of 10s. of lawful money of Great Britain by the said E. and F. to the said (I. W.) paid at or before the sealing and delivering of these presents the receipt of which is hereby acknowledged she the said (I. W.) with the privity and consent of the said (father and I. H.) testified by their severally sealing and delivering these presents Doth by these presents grant and confirm unto the said E. and F. and their heirs all that the annual sum or yearly rent of £ limited to the said (I. W.) and her assigns for her life by the said (father) in and by the within written indenture and the powers and remedies by the same indenture given and limited to the said (I. W.) and her assigns for recovering and enforcing the payment of the same and all the estate right title possibility property claim and demand of the said (I. W.) of in and to the said annual sum or yearly rent of £ and the said powers and remedies To have hold receive and take the said annual sum of £ and all and singular other the premises hereinbefore granted and confirmed or intended so to be and every of them unto and to the use of the said E. and F. their heirs and assigns In trust that they the said E. and F. and the survivor of them and the heirs and assigns of such survivor shall and do from time to time pay the said annual sum or yearly rent of £ to such person or persons and in such manner as the said (I. W.) from time to time by any writing or writings signed by her with her name in her own handwriting shall as the said annual sum or yearly rent shall become due and payable (and not in any mode of anticipation) direct or appoint or for want of such direction or appointment into her own hand for her own sole separate and peculiar use and benefit independently and exclusively of the said (I. H.) or of any future husband of her the said (I. W.) and without being in anywise subject and liable to his control debts or interference and her receipts in writing for the same annual sum or yearly rent of £ or any part thereof shall notwithstanding her now intended or any future coverture be good and

effectual releases and discharges for the same respectively *And this Indenture also witnesseth* That in further pursuance of the agreement and for the considerations mentioned in the within written indenture and also in consideration of 10s. of like lawful money of Great Britain by the said C. and D. paid at or before the sealing and delivering of these presents the receipt of which is hereby acknowledged she the said (*I. W.*) with such privity and consent and so testified as hereinbefore is mentioned *Doth* by these presents bargain sell and assign unto the said C. and D. their executors administrators and assigns all that the sum of £ with the payment of which to the said (*I. W.*) her executors administrators or assigns the said (*father*) hath charged the within mentioned manors and other hereditaments and the interest to become due for the same and full power and authority to ask demand sue for recover receive and give effectual receipts and discharges for the said sum of £ and the interest thereof and all the right title interest possibility property claim and demand of her the said (*I. W.*) in to from out of and upon the said sum of £ and the interest thereof *To have hold receive and take* the said sum of £ and the interest thereof and all and singular other the premises lastly hereinbefore assigned or expressed or intended so to be unto and by the said C. and D. their executors administrators and assigns upon and for the trusts intents and purposes and with under and subject to the powers provisoes agreements and declarations in and by the within written indenture expressed and contained of and concerning the same. *In witness &c.*

No. CXVII.
*Annuity and
Portion.*

Assignment of
portion to
trustees.

No. CXVIII.

Appointment of a Chaplain.

Obs. Archbishops are authorized to have eight chaplains; dukes and bishops six; marquises and earls five; viscounts four; barons, knights of the garter, and lord chancellor, three; duchesses, &c., being widows, two; the treasurer and comptroller of the Queen's household, the king's secretary, the dean of the chapel, the Queen's almoner, and the master of the rolls, two; the judges of the Queen's Bench and Common Pleas, the chancellor and chief baron of the Exchequer, the barons of the Exchequer, warden of the Cinque Ports, and the chancellor of the duchy of Lancaster, and the attorney and solicitor general, one. 1 Stephens' Laws of the Clergy, 265.

No. CXVIII.
Chaplain.

Liberty to have
chaplains.

No. CXVIII.
Chaplain.

Under stat. 1 & 2 Vict. c. 106, s. 38, Chaplains to the queen, king, queen dowager, or queen or king's children, brothers or sisters, or to any archbishop or bishop, or to the house of commons, the clerk or deputy clerk of the closet, and the chancellor, vicar general, or commissary of any diocese, are, with respect to residence on a benefice, under that act, entitled to account the time during which they shall be so resident engaged or performing duties, as if they had legally resided during the same time on some other benefice.

Stamp duty.

2. A stamp of 2l.

Know all Men by these Presents That I the Right Honorable &c. do by these presents nominate constitute and appoint the Reverend A. B. of &c. to be my domestic chaplain and to have hold and enjoy all and singular the benefits liberties privileges and advantages due and of right granted to the chaplains of nobility by the laws and statutes of the realm. *In witness &c.*

No. CXIX.

No. CXIX.
*Of a Chaplain
by a Bishop.*

Appointment of a Chaplain by a Bishop.

Know all &c. (see *last precedent*) That we by divine permission Bishop of for and in consideration of the learning good life and sincere religion of our beloved in Christ A. B. clerk do &c. nominate &c. In testimony whereof we have put our seal which we use in this case to these presents and have subscribed the same this day of in the year of our Lord Christ and in the year of our translation &c.

No. CXX.

Appointment of a Parish Clerk.

No. CXX.
*Of a Parish
Clerk.*
Right of ap-
pointment.

Obs. 1. By the common law and custom of the realm, incumbents have the right of nominating the clerk of the parish, Gibs. 214; unless where the parishioners claim the right by prescription of electing in open vestry, *Jermyn's case*, Cro. Jac. 670; see further 3 Burn, Ecc. L. Phillimore's ed. 82 *et seq.*; 1 Stephens' Laws of the Clergy, pp. 869—877.

2. If under hand only, and the fees only amount to 50l., no stamp appears to be necessary.

Know &c. (see *supra*, No. CXVIII.) That I (*appointor*) of &c. have nominated ordained and appointed and by &c. do nominate &c. to be the parish clerk of the parish church of &c. in the room stead and place of And the said office to have and execute by himself his deputy or deputies for and during the term of his natural life and during the same time to have perceive receive and take all such wages fees dues duties profits and emoluments as belong and are and shall be due to the said office and of right ought to belong to the same in as large and ample a manner as the said or any of his predecessors clerks of the said parish of have had or ought to have had as due and accustomed to the said parish clerk *In witness* &c.

No. CXX.
*Of a Parish
Clerk.*

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No. CXXI.

Appointment of a Gamekeeper.

No. CXXI.
*Of a Game-
keeper.*

Obs. 1. The 1 & 2 Will. 4, c. 32, by which the game laws are consolidated into one Act, provides, in ss. 13, 14, that any lord of a manor may appoint, in writing, under his hand and seal, one or more person or persons as a gamekeeper or gamekeepers, to preserve and kill the game within the limits of such manor, for the use of such lord, and authorize such gamekeeper or gamekeepers to seize and take all dogs, nets, and other engines; and by s. 16 it is provided, that such appointments must be registered with the clerk of the peace for the county. See 2 Byth. by Sweet, pp. 547—558.

2. A stamp of 1*l.* 15*s.*

Stamp.

Know all Men by these Presents That I A. B. of &c. lord of the manor of in the county of do hereby nominate and appoint C. D. of &c. to be gamekeeper during my pleasure of and in my said manor and all the royalties rights members and appurtenances thereunto belonging and for my use to keep and preserve the game from time to time and to kill them for my use under my orders and directions and to take seize and detain all guns dogs ferrets nets snares wires and other engines whatsoever for the unlawful taking and destroying the said game found in or upon the said manor *And further* I do hereby give and grant unto him the said C. D. during my pleasure full power and authority to do all and every other lawful act which may be

No. CXXI.
Of a Game-
keeper.

requisite and necessary for the preservation or pursuit of the said game *In witness &c.*

Signed sealed and delivered being first }
duly stamped in the presence of }

A. B.

G. H.

APPOINTMENTS OF GUARDIANS.

- | | |
|--|--|
| 1. <i>Appointment of Guardians by Father.</i> | 3. <i>Appointment of Guardian by Infant.</i> |
| 2. <i>Only in case of legitimate Children.</i> | 4. <i>Stamp Duty on Appointment.</i> |

Appointment
of guardians by
father.

SECT. 1. The appointment of guardians in writing is made in two cases, namely, by the father or by the infant. By the 12 Car. 2, c. 24, the father, although under the age of twenty-one, may by deed or will, attested by two witnesses, appoint who shall be the guardians of his children after his decease; and guardians so appointed are called testamentary guardians, whose appointment shall be effectual against all claiming as guardians in socage or otherwise, 2 Fonbl. Eq. 247, 5th ed. It is immaterial by what words the guardian is appointed, provided the father's intention is sufficiently apparent, Swinb. Pt. 3, c. 12. The 7 Will. 4 & 1 Vict. c. 26, extends to wills appointing a guardian, and by the 7th section no will made by a person under 21 years is valid.

Only in case of
legitimate chil-
dren.

2. A father cannot by law appoint a guardian of children not born in wedlock, but the Court of Chancery will for the most part appoint the persons named in the father's will to be guardians. 2 Cox, Ca. 46.

Appointment
of guardian by
infant.

3. When an infant has no such property as attracts guardianship, and is destitute of any lawful guardian, by the appointment of the father or otherwise, he may at any age appoint such person as he may think proper to be the guardian of his estate and person. Also after the age of fourteen, when the custody of the guardian by socage terminates, the minor is at liberty, for want of a guardian by the father's appointment, to elect one for himself; and in some instances has been called upon by the Court of Chancery so to do. Fonbl. Eq. 235, 5th ed.; Macpherson on Law relating to Infants, pp. 76—79.

Stamp.

4. If the appointment be, as it usually is, under hand and seal, and delivered as a deed, the stamp of 35s. is chargeable upon it.

No. CXXII.

Appointment of a Guardian by Father.

No. CXXII.

Of a Guardian.

Know all Men by these Presents That I A. B. of &c. do by these presents commit and dispose unto (*wife*) my wife the custody tuition and education of (*children*) my children from and after my decease until such of them as are sons shall attain the age of 21 and such of them as are daughters shall attain that age or marry And in case my said wife shall happen to die before me or after my decease should marry again before my said children should attain their respective ages of 21 or marry as aforesaid then and in such case I do commit and dispose unto G. D. such care and guardianship and beg of the said G. D. to take upon him such charge for the good of my said children
In witness &c.



No. CXXIII.

Appointment of a Guardian by an Infant.

No. CXXIII.

By an Infant.

Obs. As to appointment by the infant, and the stamp, see *supra*, sects. 3, 4.

Know all Men by these Presents That I A. B. son and heir of A. B. of &c. deceased being of the age of fourteen years and upwards have elected nominated and appointed and by these presents do elect nominate and appoint E. F. of &c. guardian of my person and estate to do execute and perform during my minority all such acts matters and things whatsoever for me and on my behalf as a guardian may or ought to do And I do hereby promise to be ruled and governed by him in all things touching my welfare (*a*) *In witness &c.*

(*a*) If it be necessary, add, “*And I do also hereby authorize and empower the said (guardian) to enter upon and take possession of all and every my messuages and tenements lands hereditaments and premises whatsoever situate lying and being in the county of or elsewhere and to let the same and take the rents and profits thereof during the term aforesaid And whatsoever he shall lawfully do in the premises I do hereby promise to confirm.*”



No. CXXIV.
Of a Receiver.

Modes of ap-
pointing a re-
ceiver.

Stamp.

Recital of
mortgage in
fee.

Agreement to
appoint re-
ceiver.

No. CXXIV.

Appointment of Receiver to secure Rents to Mortgagee (a).

Obs. 1. The appointment of a receiver, if made by deed, may either be by way of power of attorney or by way of demise to the receiver. The first, which is the more usual form, is frequently made in the mortgage deed under which the receiver is to act: but the more convenient mode is by a separate deed. Appointments by way of demise have this convenience, that they enable the receiver to distrain either before or after the decease of the party appointing.

2. A stamp of 1l. 15s., and a further progressive duty of 10s. for every entire quantity of 1080 words over and above the first 1080.

This Indenture made &c. Between (mortgagor) of &c. of the first part (mortgagee) of &c. of the second part and (receiver) of &c. of the third part Whereas by indenture bearing even date with these presents and made between the said (mortgagor) of the one part and the said (mortgagee) of the other part in consideration of the sum of £ paid to the said (mortgagor) by the said (mortgagee) he the said (mortgagor) did grant and confirm unto the said (mortgagee) and his heirs All those &c. (parcels) To hold the same unto and to the use of the said (mortgagee) his heirs and assigns for ever subject nevertheless to a proviso therein contained for the redemption of the said hereditaments and premises on payment by the said (mortgagor) his heirs executors administrators or assigns unto the said (mortgagee) his executors administrators and assigns of the sum of £ and interest for the same after the rate of £ per cent. on or at the days or times and in manner therein expressed and declared And whereas upon the treaty for the said loan it was agreed that so long as the said principal sum or any part thereof should remain upon the security of the said messuages farms lands and hereditaments comprised in the said in part recited indenture of mortgage a receiver should be appointed upon the trusts and for the ends intents and purposes hereinafter expressed and that the said (R.) should be the receiver immediately appointed for that purpose Now this Indenture witnesseth That in pursuance of the said recited agreement and in consideration of the premises

(a) See Appointment of Receiver in Annuity Deed, *ante*, pp. 197—201.

he the said (*mortgagor*) with the consent and approbation of the said (*mortgagee*) testified by his executing these presents *Doth* make constitute and appoint the said (*R.*) his sole receiver agent and attorney from time to time in the name of the said (*mortgagor*) to ask demand collect and receive all and every the rents and profits of all and singular the said messuages farms lands tenements and hereditaments comprised in the said in part recited indenture of and from the present and future tenants and occupiers thereof and all and every person and persons liable to pay the same respectively as and when the same shall from time to time become due and payable *And* in default of payment thereof or of any part thereof to take and use all such lawful remedies for recovering the said rents and profits or any of them or any part thereof by action suit distress entry or otherwise as the said (*R.*) shall think necessary *And* generally to do perform and execute all other acts matters or things needful and requisite for collecting and receiving the said rents and profits as fully and effectually to all intents and purposes as the said (*mortgagor*) could or might do *And* the said (*mortgagor*) doth hereby order and direct all and every the tenant and tenants and occupiers of the said messuages and tenements farms lands and hereditaments and premises to pay unto the said (*R.*) or to his substitute or substitutes to be appointed as hereinafter mentioned all and singular the rents and profits for the purposes hereinafter mentioned and doth hereby declare that the receipt or receipts of him or them shall be good and sufficient discharges to such tenants and occupiers for such sums as shall be therein respectively acknowledged to have been received *And* it is hereby declared and agreed by and between the parties to these presents that the said (*R.*) shall hold the said rents issues and profits so received upon the trusts following (that is to say) *Upon trust* from time to time out of the said rents and profits in the first place to pay all taxes rates assessments and impositions whatsoever charged assessed or imposed or to be charged assessed or imposed upon or in respect of the said hereditaments or any of them and which the tenants or occupiers thereof shall not be liable to pay [*And* in the next place to pay and discharge the yearly rents reserved and made payable as aforesaid in the said recited indentures of lease and all such costs charges and expenses as shall be incurred or sustained in observing and performing the covenants conditions and agree-

No. CXXIV.
Of a Receiver.

Power of attorney.

Direction to
tenants to pay
receiver.

Declaration of
trusts.

To pay taxes.

No. CXXIV. <u>Of a Receiver.</u>	<p>ments in the same indentures respectively contained <i>And</i> in the next place to pay and discharge all such costs and expenses as shall be incurred or sustained in keeping the said messuages and premises and all and every part thereof in good and tenantable repair <i>And</i> in the next place to pay all and every such annual premium or premiums or sum or sums as shall be necessary for the purpose of keeping the said messuages and premises insured against fire in some reputable insurance office in London or Westminster in the sum of £ and for effecting and renewing from time to time the insurance of the same premises to such amount as aforesaid (a)] <i>And</i> in the next place to deduct and retain for his own use so much and such sums of money not exceeding the rate of five pounds for every one hundred pounds received by him as shall be a reasonable compensation for his care trouble and expense in recovering and paying the said rents and profits in manner and for the purposes herein mentioned <i>And</i> in the next place to pay to the said (<i>mortgagee</i>) his executors administrators and assigns the interest due upon the said sum of £ or so much thereof as for the time being shall remain unpaid by two equal half-yearly payments on the day of and the day of in every year <i>And</i> in the last place to pay the clear residue and surplus which shall remain of the said rents and profits after answering the several purposes aforesaid unto the said (<i>mortgagor</i>) his heirs executors administrators or assigns or to such person or persons as he or they shall direct or appoint <i>And</i> the said (<i>mortgagor</i>) doth hereby for himself his heirs executors administrators and assigns covenant with the said (<i>mortgagee</i>) his executors administrators and assigns by these presents in manner following (that is to say) That he the said (<i>mortgagor</i>) shall not nor will without the consent in writing under the hand or hands of the said (<i>mortgagee</i>) his executors administrators or assigns first had or obtained revoke the powers and authorities hereby given to the said (<i>R.</i>) or any future receiver to be appointed as hereinafter is mentioned or do or knowingly suffer to be done any act deed matter or thing whereby the said powers or authorities or any of them shall or may become void or of no effect or whereby the said (<i>R.</i>) or such future receiver as afore-</p>
To reimburse himself.	
To pay interest.	
To pay surplus to mortgagor.	
Covenant by mortgagor not to revoke power;	

(a) The clauses within brackets to be inserted when the circumstances of the case require it.

said shall or may be hindered or obstructed in collecting receiving or recovering all or any of the said rents and profits of the said hereditaments and premises and applying the same upon and for the trusts and purposes aforesaid during such time as the sum of £ or any part thereof or any interest thereon shall remain and continue on the security hereinbefore mentioned *And further* That in case the said (*R.*) shall by death or other disability be disqualified or rendered incapable to collect or receive the said rents and profits or shall refuse or neglect to proceed therein in manner aforesaid or shall otherwise misbehave himself in the trusts hereby in him reposed whilst the said sum of £ or any part or any interest for the same shall remain and continue on the aforesaid security then and in any of the cases aforesaid he the said (*mortgagor*) his heirs executors and administrators shall and will join with the said (*mortgagee*) his executors administrators and assigns in removing the said (*R.*) if then living from his employment and shall and will duly constitute and appoint such other fit person or persons in the place of the said (*R.*) as the said (*mortgagee*) his executors administrators or assigns shall from time to time nominate or approve to collect receive and pay the said rents and profits upon and for the trusts and purposes hereinbefore mentioned *And* so from time to time when and so often as the like case shall happen until the said sum of £ and all the interest for or in respect thereof shall be fully paid to the said (*mortgagee*) his executors administrators or assigns *And* in case the said (*mortgagor*) his heirs executors administrators or assigns or any of them shall refuse or neglect so to do for the space of three calendar months next after request shall have been made unto him or them in writing by the said (*mortgagee*) his executors administrators or assigns for that purpose then and in such case and as often as the same shall happen it shall be lawful for him the said (*mortgagee*) his executors administrators or assigns without the consent or concurrence of the said (*mortgagor*) his heirs executors administrators or assigns to constitute and appoint some fit person to collect receive and pay the said rents and profits upon the trusts and for the purposes aforesaid in the place or stead of the person or persons who shall so die or become incapable or misbehave with such salary or emolument for his care and trouble as he the said (*mortgagee*) his executors administrators or assigns shall think fit not exceeding the rate aforesaid on the gross rental for the time

No. CXXIV
Of a Receiver.

and to join in
appointing
another receiver.

In case of
neglect mortgagee to appoint.

No. CXXIV.
Of a Receiver.

Clause of indemnity.

Mortgagee not to be answerable for losses occasioned by receiver.

Covenant from mortgagee that mortgagor may receive rents and profits until default.

Covenant from receiver that he will faithfully collect and pay rents, &c.

being *Provided always* and it is hereby declared and agreed that the said (*mortgagee*) his executors administrators or assigns shall not in anywise be charged or chargeable with or answerable for any loss misapplication or nonapplication of the rents and profits of the said messuages tenements farms lands and hereditaments or any part thereof by reason of any default neglect or breach of trust of the said (*R.*) or any future receiver so to be appointed as aforesaid but that such loss misapplication or nonapplication as also every such receiver's salary shall be wholly borne and paid by the said (*mortgagor*) his heirs executors administrators or assigns *Provided also* and it is hereby further declared and agreed by the parties to these presents that until some half-yearly interest on the said sum of £ or some part thereof shall be in arrear and unpaid by the space of calendar months next after the same shall have become due all and singular the rents and profits of the said messuages and tenements farms lands hereditaments and premises shall and may be paid to and retained by the said (*mortgagor*) his heirs and assigns to and for his and their own proper use and benefit and that until that time the said (*R.*) and any future receiver shall not act under or exercise any of the powers and authorities given unto him as aforesaid anything herein contained to the contrary notwithstanding *And* the said (*R.*) doth hereby for himself his heirs executors and administrators covenant with the said (*mortgagee*) and also separately with the said (*mortgagor*) that he the said (*R.*) shall and will from time to time so long as he shall be and continue the collector or receiver of the said rents and profits use his utmost endeavours faithfully to collect and receive the same and shall and will truly and punctually pay or cause to be paid in manner and for the trusts aforesaid all such sums of money as shall from time to time be collected and received by him the said (*R.*) by virtue of and under the aforesaid powers and authorities *In witness &c.*



No. CXXV.
Of a Steward of a Manor.

May be by parol.

No. CXXV.

Appointment of a Steward of a Manor.

Obs. The appointment of a steward by the lord or lady of a manor solely seised of the manor, if notified by parol, is as effectual in all points as if made by deed; but a patent is necessary for making stewards to the king's or queen's manors; and a patent or deed in the

case of a corporation aggregate, Co. Cop. s. 45; 4 Co. 26; Co. Litt. 61 b; Gilb. Ten. 221. See Shelford on Copyholds, pp. 215—218. No. CXXV.
*Of a Steward of
 a Manor.*

Know all Men by these presents That I (lord or lady) have given and granted and by these presents do give and grant unto (steward) of &c. gentleman the office of steward of my manor of in the county of And I have constituted and appointed and do constitute &c. him the said (S.) steward of the said manor to keep and hold all courts belonging to the said manor at the usual times the same have been accustomedly holden and at such other times as he the said (S.) shall think fit and expedient *To have* hold and enjoy the said office of steward and to take and receive all and singular the fees and profits thereto belonging by him the said (S) or his sufficient deputy during my will and pleasure (or “during the will and pleasure of me my heirs and assigns” or “during the life of the said steward” as the case may be) *In witness &c.*

No. CXXVI.

Appointment to the Stewardship of a Customary Court Baron ; No. CXXVI.
(with the Powers created by the Act of 4 & 5 Vict. c. 35) (a). *Of a Steward of
 a Manor.*

Know all Men by these presents That I A. Z. lord of the manor of in the county of do hereby make ordain constitute and appoint J. S. of &c. to be steward of the afore-said manor of and the members thereof, with full power and authority from time to time to hold courts baron and customary courts for the same manor and its members, and to do all acts usual and customary to be done by stewards in relation thereunto, and also all acts authorized to be done by stewards either within or out of the manor and without holding a court by and under the provisions of the Act of Parliament of 4 & 5 Vict. c. 35 (sections 87 and 88) accounting to me from time to time for such fines heriots reliefs forfeitures amercements and other manorial profits as shall be received by him or by his deputy or deputies *And* I do hereby more especially authorize and empower the said J. S. from time to time as there may be occasion to make any voluntary grants of all or any customary or copyhold lands within the said manor and to give and exe-

(a) See 2 Scriv. on Copyholds, 831, 832, 4th ed.

No. CXXVI. *Of a Steward of a Manor.* cude to the tenants thereof any licences to demise or otherwise as he the said J. S. shall deem expedient and either in or out of court and either in or out of the manor as fully as I myself could or might do *And* also to appoint any deputy steward or deputy stewards of or for the said manor of and its members with full power to hold all or any such courts as aforesaid, and to do such other act or acts as he the said J. S. could or might do as chief steward of the same manor and also to depute any person or persons to act under him as sub-deputy steward or stewards of the said manor as occasion may require but such appointment of a deputy or sub-deputy steward for the purpose of any act out of court to be made by deed only and not by parol *And* I do hereby ratify and confirm all and whatsoever the said J. S. or such his deputy or deputies sub-deputy or sub-deputies shall lawfully do or cause to be done by virtue of these presents, hereby declaring that this appointment shall continue in force during my will and pleasure only *In witness* whereof I have hereunto set my hand and seal this day of in the year of our Lord .

A. Z. (L. s.)

Sealed &c.



No. CXXVII.

Of Deputy Steward.

No. CXXVII.

A General Appointment of an Under Steward.

Know all Men by these presents That I J. S. steward of the manor of in the county of by virtue of the power or authority to me given in this behalf by A. Z. lord of the said manor do by these presents make ordain constitute and appoint A. B. of &c. to be my deputy steward of the aforesaid manor of and the members thereof with full power and authority from time to time to hold courts baron and customary courts for the same manor and its members, and to do all such acts in the performance and execution of the duties of the said office as I myself could or might do being personally present and with liberty and authority to depute any person or persons to act under him as sub-deputy steward or stewards of the said manor as occasion may require, he the said A. B. accounting to me from time to time for such fines heriots reliefs ameracements and profits of court, and all fees and perquisites whatsoever arising from the said office, upon being required thereunto and

I do hereby declare that this appointment shall continue in force during my will and pleasure *In witness &c.*

No. CXXVII.

*Of Deputy
Steward.*

J. S. (L. s.)

Sealed &c.

No. CXXVIII.

*Deputation to take a Surrender out of Court from C. D. and his
Wife of Lands belonging to the Wife.*

No. CXXVIII.

*Of Deputy to
take Surrender.*

Know all Men by these presents That I J. S. steward of the manor of in the county of do by these presents make ordain constitute and appoint A. B. of &c. my deputy steward of and for the said manor for the special purpose and turn only of taking and accepting a certain surrender already prepared, and bearing even date herewith, from C. H. of &c. and D. his wife by the rod according to the custom of the said manor of *All* &c. and to which same premises the said D. H. was admitted at a general court held for the said manor, on the day of and of all the estate and interest of the said C. H. and D. his wife respectively therein or thereto, to the use of I. L. of &c. his heirs and assigns for ever according to the custom of the said manor pursuant to a contract by the said C. H. and D. his wife for the sale of the same premises to the said I. L. *And* I do hereby authorize and empower the said A. B. as my deputy steward to examine the said D. H. separately and apart from her said husband as to her free and voluntary consent to the said surrender and generally to do and perform all acts matters and things for the purposes aforesaid as fully and effectually to all intents and purposes as I myself could or might do being personally present the said A. B. duly accounting to me for such fees sum and sums of money as shall be received by him for my use by virtue of this appointment upon being thereunto required *In witness &c.*

J. S. (L. s.)

Sealed &c.

No. CXXIX.
Of Trustees.

No. CXXIX.

Appointment of New Trustees by Virtue of a Power in a Settlement.

Appointment
by Court of
Chancery.

Obs. 1. By the 13 & 14 Vict. c. 60, the Lord Chancellor is empowered to convey estates vested in lunatic trustees and mortgagees, and the Court of Chancery is empowered to convey estates vested in trustees out of the jurisdiction of the court, and also estates which shall have been vested in two or more trustees jointly, when it shall be uncertain which of such trustees was the survivor; and also estates when it shall not be known whether the last trustee was living or dead, and estates of which the last trustee shall have died intestate and without an heir, or shall have and it shall not be known who is his heir or devisee; and also estates the trustee of which shall refuse to convey:—in all such cases the Lord Chancellor or the Court of Chancery are enabled either to make an order having the effect of a conveyance, or to appoint a person to convey. The Court of Chancery is, by sect. 32 of the same act, empowered to appoint new trustees, and to vest the lands, subject to the trust, in the new trustees. See Shelford's Real Prop. Stat. pp. 605—635, 6th ed.

Stamp.

2. A common deed stamp of 1*l.* 15*s.* and a progressive duty of 10*s.* for every 1080 words above the first 1080.

Recital of deed
of settlement
creating the
power.

This Indenture &c. Between (*Old Trustees*) of &c. of the first part (*Husband*) of &c. and M. his wife of the second part and (*New Trustee*) of &c. of the third part *Whereas* by indenture of assignment and release bearing date the day of 18 grounded on a lease for a year and made or expressed to be made between &c. and purporting to be a settlement made previously to the marriage then in contemplation and which soon after took effect between the said (*husband and wife*) certain freehold lands tenements and hereditaments therein particularly described were conveyed and assured to the said (*O. T.*) their heirs and assigns upon the trusts therein declared concerning the same and by the same indenture certain leasehold hereditaments therein mentioned were assigned to the said (*O. T.*) their executors administrators and assigns for the residue of a term of 99 years upon the trusts therein declared concerning the same *And* by the same indenture it was declared that the said (*O. T.*) should stand possessed of the sum of Three Pounds per Cent. Consolidated Bank Annuities upon the trusts therein mentioned *And* by the same indenture it was declared that in case the said (*O. T.*) or any of them should die or be desirous

to be discharged from the trusts thereby in them reposed or should refuse or be incapable to act in the said trusts it should and might be lawful to and for the said (*O. T.*) or the survivors or survivor of them by and with the consent of the said (*H.*) and *M.* his wife or the survivor of them testified in writing under their hand and seals to nominate and appoint one or more new trustee or trustees in the room of such trustee or trustees so dying or desiring to be discharged from or neglecting or refusing to act in the said trusts and that the retiring trustees or trustee as aforesaid should do such acts deeds matters or things as should be necessary for transferring and vesting the trust premises respectively in such new trustee or trustees so as that the same should and might be legally and effectually vested in such new trustee or trustees *And* that he or they should and might act in the execution of the said trusts as fully and effectually in all respects as if he or they had been originally nominated and appointed *And whereas* the said (*O. T.*) are desirous to give up and be discharged from the trusts reposed in them by the said in part recited indenture *And whereas* the said (*O. T.*) at the request of the said (*H.*) and *M.* his wife and on the acceptance of the said (*N. T.*) have agreed to appoint them the said (*N. T.*) in the place and stead of the said (*O. T.*) in the manner hereinafter mentioned *And whereas* the said sum of Three Pounds per Cent. Consolidated Bank Annuities is intended to be forthwith transferred by the said (*O. T.*) into the joint names of the said (*N. T.*) in the books of the governor and company of the Bank of England *Now this Indenture witnesseth* That by virtue and in exercise of the power and authority for that purpose in and by the said in part recited indenture given and reserved they the said (*O. T.*) by and with the consent and approbation of the said (*H.*) and *M.* his wife testified by their being parties to and signing sealing and delivering these presents do nominate and appoint the said (*N. T.*) to be trustees in the room and stead of the said (*O. T.*) and for all the purposes for which the said (*O. T.*) were trustees under or by virtue of the said hereinbefore recited indenture of settlement or such of the same purposes as remain to be performed and are capable of taking effect *And this Indenture also witnesseth* That the said (*O. T.*) at the request and by the direction of the said (*H.*) and *M.* his wife testified as aforesaid do hereby grant and convey unto the said (*N. T.*) and their heirs all and singular the freehold lands tenements hereditaments and premises comprised in and conveyed by the said

No. CXXIX.
Of Trustees.

Appointment
of trustees.

Conveyance of
freeholds.

No. CXXIX. Of Trustees. indenture of settlement as hereinbefore is mentioned with their rights easements and appurtenances and all the estate right title and interest of them the said (*O. T.*) and each of them of in to out of or upon the same premises *To have and to hold* the same premises unto the said (*N. T.*) and their heirs to the use of the said (*N. T.*) and their heirs and assigns for ever upon and for such trusts and for such intents and purposes and under and subject to such powers provisoes and declarations as in and by the said recited indenture of settlement are expressed and declared concerning the same or such of the same trusts intents and purposes powers provisoes agreements and declarations as are now subsisting and capable of taking effect

Assignment of leaseholds. *And this Indenture also witnesseth* That in further obedience to the said directions they the said (*O. T.*) do hereby assign unto the said (*N. T.*) and their executors administrators and assigns all and singular the leasehold lands tenements hereditaments and premises comprised in and assigned by the said indenture of settlement as hereinbefore is mentioned and all the estate right title and interest of them the said (*O. T.*) and each of them of in to out of or upon the same premises *To have and to hold* the same premises unto the said (*N. T.*) their executors administrators and assigns for the residue of the said term of 99 years upon such trusts &c. [*see above*] *And it is* hereby agreed and declared that the said (*N. T.*) and the survivor of them and the executors administrators and assigns of such survivor shall stand and be possessed of and interested in the said sum of £ Three per Cent. Consolidated Bank Annuities when and so soon as the same shall have been transferred into the joint names of the said (*N. T.*) and of and in the dividends interest and annual proceeds thereof upon and for such trusts and for such intents and purposes and with under and subject to such powers provisoes agreements and declarations as in and by the said recited indenture of settlement are expressed and declared of and concerning the same or such of the same trusts intents and purposes powers provisoes agreements and declarations as are now subsisting and capable of taking effect *And* each of them the said (*O. T.*) so far as relates to his own acts and deeds doth hereby for himself his heirs executors and administrators covenant with the said (*N. T.*) their heirs executors administrators and assigns that they the said (*O. T.*) respectively have not made or done or knowingly permitted or suffered any act deed matter or thing whereby the premises

Declaration of trusts of stock.

Covenant against incumbrances.

hereinbefore granted and assigned respectively or any part thereof are is can shall or may be impeached charged affected or incumbered in title estate or otherwise howsoever or whereby the said (*O. T.*) are in anywise prevented from granting or assigning the same premises respectively in manner aforesaid according to the true intent and meaning of these presents *In witness &c.*

No. CXXIX.
Of Trustees.

No. CXXX.

Appointment of New Trustees of a Marriage Settlement, and Conveyance and Assignment by Indorsement of the Real and Leasehold Estates subject to the Trusts thereof.

No. CXXX.
Of New Trustee.

This Indenture made the day of in the year of our Lord between the within named (*old trustee*) of the first part the within named (*Husband* and *M. his wife*) of the second part (*A. B.*) of &c. of the third part and the said (*old trustee* and *new trustee*) of the fourth part *Whereas* a marriage between the said (*H. and wife*) was duly solemnized shortly after the execution of the within written indenture *And whereas* the said (*deceased trustee*) departed this life on or about the day in the year leaving the said (*old trustee*) his co-trustee him surviving *And whereas* the said (*H. and wife*) are desirous of appointing the said (*new trustee*) to be a trustee in the place or stead of the said (*deceased trustee*) jointly with the said (*surviving trustee*) for all the purposes for which the said (*deceased* and *surviving trustee*) were trustees under or by virtue of the within written indenture *And whereas* the said (*H. and wife*) have requested the said (*surviving trustee*) to convey and assign the hereditaments and premises comprised in the within written indenture to the uses upon the trusts and for the ends intents and purposes hereinafter expressed and declared of and concerning the same *Now this Indenture witnesseth* That by virtue and in exercise and execution of the power or authority powers or authorities in that behalf given or reserved to the said (*H. and wife*) in or by the within written indenture and of every other power or authority in anywise enabling them the said (*H. and wife*) in this behalf they the said (*H. and wife*) do and each of them doth by this deed or writing signed sealed and delivered by them in the presence of and intended or to be attested by the two credible persons whose names are subscribed at the foot of

Appointment
of new trustee.

No. CXXX.
*Of New
 Trustee.*

Conveyance of
 freeholds.

the memorandum of attestation hereunder written as witnesses to the execution hereof by the said (*H. and wife*) and upon the acceptance of the said new trustee testified by his executing these presents nominate and appoint the said (*new trustee*) to be a trustee in the place of the said (*deceased trustee*) for all the purposes of the within written indenture or for such and so many of the same purposes as now remain to be performed and are capable of taking effect *And this Indenture also witnesseth* That in compliance with the said request of the said (*H. and wife*) and in consideration of 10s. of lawful money of Great Britain to the said (*surviving trustee*) paid by the said (*A. B.*) immediately before the execution of these presents the receipt whereof is hereby acknowledged and in compliance with the directions in that behalf contained in the within written indenture The said (*surviving trustee*) at the request of the said (*H. and wife*) and with the privity and consent of the said (*new trustee*) testified as aforesaid *Doth* by these presents grant release and confirm unto the said (*A. B.*) and his heirs and assigns *All* and singular the manor messuages farms lands and hereditaments which were comprised in and conveyed by the within written indenture unto and to the use of the said (*old trustees*) their heirs and assigns for ever with their and every of their rights members and appurtenances *And* the reversion and reversions remainder and remainders yearly and other rents and profits of the said manors messuages lands tenements and hereditaments hereby granted or intended so to be and every part and parcel of the same with their and every of their rights members and appurtenances and all the estate right title interest use trust inheritance property possession benefit and equity of redemption claim and demand whatsoever at law and in equity or otherwise howsoever of him the said (*old trustee*) of into out of or upon the said manor messuages farms lands tenements and hereditaments hereby granted or otherwise assured or intended so to be and every part and parcel of the same with their and every of their rights members and appurtenances *To have and to hold* the said manor messuages farms lands tenements and hereditaments and all and singular other the premises hereinbefore granted or otherwise assured or intended so to be and every part and parcel of the same with their and every of their rights members and appurtenances unto the said (*A. B.*) his heirs and assigns to the use of the said (*old and new trustees*) their heirs and assigns for ever *Upon* the trusts and for the intents and purposes and under and subject

to the powers provisoes and declarations in and by the within written indenture expressed and declared of and concerning the same hereditaments or such of the same trusts intents purposes powers provisoes and declarations as are now subsisting and capable of taking effect *And this Indenture further witnesseth* That for the considerations and purposes hereinbefore expressed and in consideration of 10s. of like lawful money to the said (*old trustee*) paid by the said (*A. B.*) immediately before the execution of these presents the receipt whereof is hereby acknowledged the said (*old trustee*) upon the application and at the request and by the direction and appointment of the said (*H. and wife*) testified as aforesaid *Doth* by these presents bargain sell and assign unto the said (*A. B.*) his executors administrators and assigns *All* and every the messuages farms lands and other hereditaments which were comprised in the within written indenture and thereby assigned unto the said (*old trustees*) their executors administrators and assigns for the residue of the several terms therein mentioned with their and every of their appurtenances *And* all the estate right title interest term and terms for years benefit of renewal property possession claim and demand whatsoever both at law and in equity of the said (*old trustee*) in to out of or upon the same premises and every part and parcel thereof with their and every of their appurtenances *To have and to hold* the said messuages farms lands and all and singular other the premises hereby assigned or intended so to be and every part thereof with their appurtenances unto the said (*A. B.*) his executors administrators and assigns for and during all the residue and remainder which is now to come and unexpired of the several terms of ninety-nine years and one hundred years created therein by the several indentures of lease mentioned or recited in the within written indenture under and subject to the rent covenants and agreements which are payable and to be performed in respect of the same messuages farms lands and hereditaments under or by virtue of the same indentures of lease *But* nevertheless upon this trust that the said (*A. B.*) his executors or administrators do and shall forthwith at the expense of the said trust premises assign and transfer the said messuages farms lands and other hereditaments hereby assigned or intended so to be with their appurtenances unto the said (*old and new trustees*) their executors administrators and assigns for and during the residue and remainder of the said several terms of ninety-nine years and one hundred years

No. CXXX.
Of New
Trustee.

Assignment of
leaseholds.

No. CXXX.
Of New
Trustee.

created therein as aforesaid at under and subject to the rents covenants and agreements which are payable and to be performed in respect of the said premises as aforesaid Nevertheless upon and for the trusts intents and purposes and with under and subject to the powers provisoes and declarations in and by the within written indenture expressed and declared of and concerning the same or such of the same trusts intents purposes powers provisoes and declarations as are now subsisting and capable of taking effect *In witness &c.*



No. CXXXI.
Of New
Trustee.

No. CXXXI.

*Assignment of Leaseholds by Indorsement, in pursuance of Trust
in last Deed.*

This Indenture of *made the* *day of* *in the*
year of our Lord *between the within named* (*Husband and*
M. his wife) *of the first part* (*A. B.*) *named in the indenture in-*
dorsed on the third skin of the within written indenture of the
second part and the within named (*old trustee and new trustee*)
also named in the said indorsed indenture of the third part
Witnesseth that in performance of the trusts reposed in the said
(*A. B.*) by the said indorsed indenture and in consideration of
10s. of lawful money of Great Britain to the said (*A. B.*) paid by
the said (*old and new trustees*) immediately before the execution
of these presents the receipt whereof is hereby acknowledged
He the said (*A. B.*) at the request and by the direction of the
said (*H. and M. his wife*) and with the privity and consent of
the said (*old and new trustees*) testified by their severally executing
these presents doth hereby bargain sell and assign unto the said
(*old and new trustees*) their executors administrators and assigns
all and every the messuages farms lands and other heredita-
ments comprised in the indenture indorsed on the third skin of
the within written indenture and which were thereby assigned
by the said (*old trustee*) to the said (*A. B.*) his executors admi-
nistrators and assigns with their appurtenances *And* all the estate
&c. (see *ante* p. 283) To have and to hold the said messuages
farms lands and other hereditaments hereby assigned or intended
so to be and every part thereof with their appurtenances unto
the said (*old and new trustees*) their executors administrators and
assigns for and during all the residue and remainder which is
now to come and unexpired of the several terms of ninety-nine

years and one hundred created therein as in the said within written indenture is mentioned at under and subject to the rents covenants and agreements which are payable and to be performed in respect of the same premises under or by virtue of the within recited indentures of lease respectively Nevertheless upon the trusts and for the intents and purposes and with under and subject to the powers provisoes and declarations in and by the within written indenture declared and contained of and concerning the same or such of the same trusts intents purposes powers provisoes and declarations as are now subsisting and capable of taking effect *Covenant by A. B. with the old and new trustees against incumbrances In witness &c.*

No. CXXXI.
*Of New
Trustee.*

APPORTIONMENT.

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| <p>1. <i>Definition and Application of Apportionment.</i>
 2. <i>Apportionment of Rents.</i>
 3. <i>Apportionment of Contracts.</i>
 4. <i>Apportionment of Conditions and Covenants.</i>
 5. <i>Apportionment of Commons.</i></p> | <p>6. <i>Apportionment of Annuities and Dividends.</i>
 <i>Other periodical Sums.</i>
 <i>Maintenance apportionable.</i>
 <i>Interest on a Mortgage not so.</i>
 <i>Policies of Insurance not so.</i>
 7. <i>Apportionment of Rent-charge in lieu of Tithes.</i></p> |
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SECT. 1. Apportionment, or setting apart or dividing into set portions for particular purposes, is applicable to several matters in law,—as to rents, contracts, conditions, covenants, commons, annuities, dividends, mortgages and other payments, at stated periods. Some of these things are apportionable by act of law, if not by the act of the party; some, as interest on mortgages and sums payable on policies of insurance, are not apportionable at all; others, as annuities, &c., are apportionable, not at common law, but by statute, see further, *infra*.

Definition and application of apportionment.

2. Apportionment of rent is in two ways: First, in respect to the parties entitled to receive or bound to pay the rent. Secondly, as to the particular portion of time for which rent is payable after the death of a party or otherwise.

Apportionment of rents.

By the old rule of law, where a tenant for life granted a lease for years payable half-yearly, and died in the interval before any half-yearly payment became due, his executors and administrators were not entitled to the rent coming due, but it fell into the land. By the 11 Geo. 2, c. 19, s. 15, it is provided, that where any tenant for life dies before or on the day on which any rent is reserved upon any demise which determines at the death of such tenant, his executors or

Apportionment. administrators may recover the whole, or, if before the day, a proportion of such rent, according to the time the tenant lived of the last year, half-year, quarter or other time in which the rent was growing due. Under this statute it was held that the representatives of a tenant in tail were entitled to apportionment; but whether a tenant *pur autre vie* was within the statute appears not to have been settled. But now by the 4 & 5 Will. 4, c. 22, amending and extending the former act, rents reserved on leases determining on the death of the person making them, although not strictly tenant for life, or on the death of tenant *pur autre vie*, are to be apportionable according to the provisions of that act. See Shelford's Real Prop. Stat. pp. 509—522, 6th edit.; Tudor's L. C. on Real Prop. pp. 181—187.

By the second section of the 4 & 5 Will. 4, c. 22, all rents service reserved on any lease by a tenant in fee or for any life interest, and all rents, annuities and other payments, coming due at fixed periods under any instrument executed after the passing of the act, should be apportioned so that on the death of any person interested in such rents, or the determination of the interest of such person, he or she, or his or her executors, administrators or assigns, shall be entitled to a proportion of such rents. Notwithstanding the express words of this statute, it has been held that the statute only applies to cases in which the interest of the person interested in such rents or payments is terminated by his death, or by the death of another person; but does not apply to the case of a tenant in fee, or provide for the apportionment of rent between the real and personal representative of such person whose interest is not terminated at his death, *Browne v. Amyot*, 3 Hare, 173; 8 Jur. 568. See *In re Clulow*, 3 Kay & J. 689; 26 L. J., Chan. 513. The act does not apply to rents payable from year to year, not reserved by an instrument in writing, *In re Markly*, 4 M. & C. 484. This act has been held to apply to Scotland, and includes a Scotch tenant in tail, *Fordyce v. Brydges*, 1 H. L. C. 1; *Baillie v. Lockhart*, 2 Macq. H. L. C. 258.

Apportionment
of contracts.

3. As a rule, where a contract is entire, it cannot be split, 3 Vin. Abridg. tit. APPORTIONMENT; therefore, where a party agrees to deliver a certain quantity of goods within a certain time, he cannot bring an action for the amount of any part, but must wait until the whole is delivered, *Waddington v. Oliver*, 2 N. R. 61, unless the buyer consents to keep the part, when the value thereof may be ascertained, *Shipton v. Casson*, 5 B. & C. 378, recognized in *Oxendale v. Wetherell*, 9 B. & C. 386. So where a party engages to do a specific work for a specific sum, he must complete the work before he can recover the sum agreed on, *Sinclair v. Bowles*, 9 B. & C. 92; but where a shipwright enters into a general engagement to repair a ship, he may, on having done a part, refuse to proceed until he is paid for the part completed, *Roberts v. Harelock*, 3 B. & Ad.

404, distinguishing this from the preceding case; so formerly, where a party agreed with a builder to build a house according to a given plan, and deviations were afterwards made, such deviations formerly invalidated the whole contract, and enabled the builder to make his own charges, without regard to any contract; but now he can in such case recover only on a *quantum meruit* in respect of the deviations; so formerly shipowners were liable to the full extent of any loss or damage; but by statute 17 & 18 Vict. c. 104, ss. 503—506, the liability is limited to the value of the ship and the amount of the freight; and where there are several sufferers, the compensation to them is proportioned to their several losses.

Apportionment.

4. Conditions, being entire, are for the most part not apportionable except where they are so by act of law, see *post*, LEASES; so also as to covenants for title or covenants in leases, see *post*, LEASES.

Apportionment of conditions and covenants.

5. If a man purchase part of the land, wherein common appendant is to be had, the common shall be apportioned, because it is of common right, Hob. 235; *Tyrringham's case*, 4 Co. 37; *sed secus* as to common appurtenant or any other common whatsoever, 1 Inst. 122 a.

Apportionment of commons.

6. By sect. 2 of the before-mentioned act, 4 & 5 Will. 4, c. 22, its provisions are extended to all rents, annuities, and other sums coming due at fixed periods, which are to be apportioned in like manner. This was doubtless intended to apply to every case where an annual sum determines on the death of the person interested, whether grantor or grantee; but as it is not stated in express terms, it may be prudent to insert the usual stipulation in an annuity deed. See *ante*, p. 189.

Apportionment of annuities, &c.

Although before this act there were several periodical payments which were not apportionable, as dividends on money in the funds, *Rushleigh v. Master*, 3 Br. C. C. 101, yet the case of maintenance for infants was excepted, and it was held in that case that a party was entitled to a proportional part of his annuity for the time between the last half-yearly day of payment and his attaining twenty-one, *Weigall v. Brome*, 6 Sim. 99; so interest on mortgages was held to be apportionable; but that was rather because interest on a mortgage is in fact due from day to day, and therefore not properly a periodical payment, *Edwards v. Warwick (Countess)*, 2 P. Wms. 276; see 1 Swanst. R. 337—350, n. As to dividends of a commercial company, see *Hartley v. Allen*, 4 Jur., N. S. 500; 27 L. J., Chan. 621.

Other periodical sums.

Maintenance, &c. apportionable.

Interest on a mortgage.

By sect. 3 of the 4 & 5 Will. 4, c. 22, annual sums made payable on policies of assurance are not to be apportioned.

Policies of assurance.

7. The owner of lands charged with a rent-charge in lieu of tithes may obtain an alteration of the apportionment by any three of the commissioners of land-tax for the county or place where the lands are situate, with the consent of two justices of the peace acting in such place, so that no subdivision of any rent-charge shall be less than 5s. 6 & 7 Will. 4, c. 71, s. 72; 5 & 6 Vict. c. 54, s. 14.

Apportionment of rent-charges in lieu of tithes.

No. CXXXII.

Of Rent.

No. CXXXII.

*Agreement for the Apportionment of Rent between Purchasers of Leaseholds held under the same Lease.*Recital of
lease.

This Indenture made the day of in the year of
our Lord between *(one purchaser)* of &c. of the one part
and *(other purchaser)* of &c. of the other part *(a)* Whereas by an
indenture of lease bearing date the day of and ex-
pressed to be made between *(lessor)* of one part and *(lessee)* of
the other part for the considerations therein mentioned the said
(lessor) did demise to the said *(lessee)* his executors administra-
tors and assigns *All those* &c. [*description of parcels*] *To hold*
the same unto the said *(lessee)* his executors administrators and
assigns for the term of years at and under the clear yearly
rent of £ to be paid by four quarterly payments and with
under and subject to the several covenants provisoes conditions
and agreements in the same indenture contained and on the
part of the said *(lessee)* his executors administrators and assigns
to be observed performed and kept *And whereas* the said
(lessee) on or about the day of caused the said piece
or parcel of ground and the several messuages thereupon erected
to be put up to sale by public auction in various separate lots or
parcels at which sale the said *(first party)* became the purchaser
of the messuage or tenement comprised in lot mentioned
in the particulars of sale there exhibited being the messuage or
tenement hereinafter firstly described and the said *(second party)*
became the purchaser of the messuages or tenements comprised
in lot in the said particulars of sale mentioned being the
messuage or tenement hereinafter secondly described *And*
whereas in and by certain printed conditions of sale subjoined to
the said particulars it was declared that the several purchasers
of the said premises should respectively as between themselves
be subject to and pay such portion of the said rent reserved by
the said indenture of lease as therein was mentioned (that is to
say) the purchaser of lot the yearly rent of £ the
purchaser of lot the yearly rent of £ &c. and that
each of them should at his own expense enter into mutual
covenants of indemnity with the other of them against the
residue of the said rent reserved by the said indenture of lease

Conditions of
sale.

(a) Or according to the number of purchasers, each of them being of a distinct part.

and against the covenants therein contained so far as they might respectively relate to the premises by him purchased as aforesaid *And whereas* the said messuage or tenement so purchased by the said (*first party*) was by indenture of assignment bearing even date with but executed previously to the execution of these presents and made between &c. assigned or otherwise assured to him or intended so to be by the description of all &c. [*insert the description in the assignment*] *To hold* the same unto him the said (*first party*) his executors administrators and assigns from the day of then last past for and during all the rest residue and remainder then to come and unexpired of the said term of years by the said in part recited indenture of lease granted thereof but subject only to the yearly rent of £ being one (*proportion*) part of the said yearly rent or sum of £ by the said indenture of lease reserved and also to the performance of the covenants conditions and agreements in the same indenture contained on the part of the said (*lessee*) so far only as the same related to the messuage or tenement and premises thereby assigned *And whereas* the said messuage or tenement so purchased by the said (*second party*) was by indenture of assignment bearing &c. [*recite as before so far as regards the assignment to the second party*] *And whereas* in pursuance of the said conditions of sale, the said parties hereto have agreed to enter into such mutual or reciprocal covenants and agreements concerning the premises as are hereinafter contained *Now this Indenture witnesseth* That in pursuance of the said recited agreement on the part of the said (*first party*) and for and in consideration of the covenants and agreements hereinafter contained on the part of the said (*second party*) he the said (*first party*) doth hereby for himself his executors administrators and assigns covenant with the said (*second party*) his executors administrators and assigns in the manner following (that is to say) that he the said (*first party*) his executors &c. shall and will from time to time and at all times hereafter during the residue now to come and unexpired of the said term of years by the said recited indenture of lease granted as aforesaid well and truly pay or cause to be paid unto the said (*original lessor*) his executors administrators or assigns or such other person or persons as shall from time to time be entitled to receive the said ground rent or yearly sum of £ reserved by the said recited indenture of lease the clear yearly rent or sum of £ being one (*the proportion*) part of

No. CXXXII.
Of Rent.

WITNESS.
First party
covenants with
second party to
pay and in-
demnify against
his portion of
rent.

No. CXXXII. the said ground rent or yearly sum when and as the same under
Of Rent. and according to the true intent and meaning of the same inden-
 And perform ture of lease shall become due and payable *And* also that he
 covenants and the said (*first party*) his executors &c. shall and will during the
 indemnify continuance of the said term perform fulfil and keep all and
 against original singular the covenants provisoes and agreements contained in
 1 ease. the said recited indenture of lease on the part of the said (*lessee*)
 his executors &c. to be kept done and performed so far as such
 covenants provisoes and agreements relate to or concern or ought
 to be kept done and performed in respect or on account of the
 said messuage or tenement and premises so purchased by him
 the said (*first party*) as aforesaid and comprised in the herein-
 before firstly in part recited indenture of assignment and of and
 from the said (*proportion*) part of the said yearly ground rent
 or sum of £ and of and from all and every the said covenants
 provisoes and agreements in the said indenture of lease contained
 so far as the same respectively relate to or concern or ought to be
 kept and observed in respect or on account of the said messuage
 or tenement and premises so purchased by him the said (*first*
party) as aforesaid and all costs charges damages and expenses
 which he the said (*second party*) his executors &c. shall sustain
 or be liable unto for or by reason of any breach neglect or
 default of or by him the said (*first party*) his executors &c. of
 or concerning the same shall and will at all times and from time
 to time save defend and keep harmless and indemnified him the
 said (*second party*) his executors &c. and his and their lands and
 tenements goods and chattels *And* moreover that in case the
 Power of dis- the said (*second party*) his executors &c. shall at any time or times
 tress on default. hereafter pay bear or sustain any sum or sums of money loss
 costs charges or expenses for or by reason of the said appor-
 tioned yearly rent or sum of £ not being duly paid or
 of the covenants and agreements in the said in part recited
 indenture of lease not being observed or performed by the said
 (*first party*) his executors &c. as aforesaid according to the
 true intent and meaning of these presents *Then* and in every
 such case and so often as the same shall happen it shall be
 lawful for the said (*second party*) his executors &c. into and upon
 the messuage or tenement and premises so purchased by the
 said (*first party*) and comprised or intended to be comprised in
 the said firstly in part recited indenture of assignment to enter
 and distrain for all and every such sum or sums of money costs
 charges and expenses which he the said (*second party*) his exe-
 cutors &c. shall so pay bear or sustain *And* the distress and

distresses then and there found to deal with according to due course of law in like manner in all things as in the case of distress for non-payment of rent reserved on common leases to the intent that thereby he the said (*second party*) his executors &c. shall and may be fully paid and satisfied all and every such sum and sums of money costs charges and expenses as aforesaid *And this Indenture further witnesseth* That in further pursuance of the said in part recited conditions of sale and of the hereinbefore in part recited agreements on the part of the said (*second party*) and for and in consideration of the covenants and agreements hereinbefore contained on the part of the said (*first party*) he the said (*second party*) doth hereby for himself his executors administrators and assigns covenant with the said (*first party*) his executors administrators and assigns in the manner following (that is to say) that he the said (*second party*) shall and will &c. [*add similar covenants &c. by the second party as are before entered into by the first party*] And each of the said parties hereto doth hereby covenant and agree with the other of them that they respectively shall and will at the request in writing and at the expense of the other of them do and execute all such further acts and deeds as shall be deemed requisite to carry these presents into effect according to the true intent and meaning thereof, and of the said parties hereto [And if either of the parties has a right to the lease by which the rent is reserved under the condition of sale or otherwise add here a covenant by the party retaining it with the other to produce the lease when required as follows] And the said (*party retaining the lease*) doth hereby for himself his executors administrators and assigns covenant with the said (*other party*) his executors administrators and assigns that he the said (*first party*) his executors &c. shall and will from time to time and at all times hereafter during the residue now to come of the term of years upon the reasonable request and at the expense of the said (*second party*) his executors &c. not being prevented by fire or other inevitable accident produce and show forth or cause to be produced and shown forth unto the said (*second party*) his executors &c. or to his or their counsel or solicitor or at any trial or hearing in any court of law or equity or otherwise as occasion may require the said in part recited indenture of lease of the day of and at or upon the like request and expense or occasion permit him or them to take or to cause to be taken copies of or extracts from the same or of any part thereof *In witness &c.*

No. CXXXII.
Of Rent.

FURTHER
WITNESS.
Like covenant
by the second
party with the
first, with like
power of dis-
tress.

Further as-
surance.

Production of
lease.

No. CXXXIII.
Of Annuity.

No. CXXXIII.
Apportionment of Annuity.

And in case the said (*grantor* or *grantee* as the case may be) should die in the interval between any of the said quarterly days of payment then also a proportionate part of the said annuity for the time which at the decease of the said (*grantor*) shall have elapsed of the quarterly payment growing due.

See *ante*, pp. 189, 218.

APPRENTICESHIP.

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| <p>1. <i>Definition of an Apprentice.</i></p> <p>2. <i>Statutory Provisions as to Apprentices.</i>
<i>Qualification to be an Apothecary.</i></p> <p>3. <i>Articles of Apprenticeship by Indenture.</i>
<i>By Deed.</i></p> | <p>4. <i>Involment of Indentures.</i></p> <p>5. <i>Stamp Duty on Indentures.</i>
<i>Exemption of Parish Indentures.</i>
<i>Premium actually paid.</i></p> <p>6. <i>Infant cannot bind himself.</i></p> <p>7. <i>Apprenticeship how assignable.</i></p> |
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Definition of
an apprentice.

SECT. 1. The word apprentice, from *apprendre*, to learn, signifies a learner of a trade; therefore, the covenant by the master to teach the other a trade, and the latter was to do nothing ulterior to the employment in that trade, was held by Lord Ellenborough to be a contract *apprendre*; in the true sense of the word it constituted an apprenticeship within the meaning of the legislative expression, *R. v. Inhabitants of Rainham*, 1 E. 531; Chit. on App. 24.

Statutory provisions as to
apprentices.

2. By the 5 Eliz. c. 4, all persons were prohibited from following any trade, who had not served an apprenticeship of seven years; but this and other regulations respecting the qualifications of persons entitled to take and become apprentices, &c., have since been repealed; first, by the 12 Ann. st. 2, c. 3, s. 9, as to distillers of brandy from British malt; by the 17 Geo. 3, c. 55, s. 5, as to hatters and felt-makers; and generally by the 54 Geo. 3, c. 96, which enacts, that any person may take or become an apprentice, although not according to the provisions of the 5 Eliz. c. 4. By the municipal act, 5 & 6 Will. 4, c. 76, s. 14, which does not extend to London, all such customs and bye-laws of corporations as had the effect of prohibiting trades and occupations to persons who had not served as apprentices were done away with. Other statutes have likewise been passed relative to apprentices to particular trades and professions. The

42 Geo. 3, c. 73; 1 & 2 Will. 4, c. 39; 3 & 4 Will. 4, c. 103, *Apprenticeship.* contain many regulations for the purpose of preserving the health and morals of the children put apprentices to the cotton and other manufactories. The 43 Eliz. c. 2 (amended by 32 Geo. 3, c. 5), and still more by 56 Geo. 3, c. 139, contains several provisions as to the binding out or assigning over parish apprentices to businesses in general; the 4 & 5 Will. 4, c. 35, repealed and re-enacted with amendments by 3 & 4 Vict. c. 85, applies to apprentices put out to chimney-sweepers; and 17 & 18 Vict. c. 104, ss. 141—145, to apprentices put out to the sea service. By 7 & 8 Vict. c. 101, s. 13, persons are not compellable to receive any poor child as an apprentice.

The manner in which parish apprentices are to be bound and maintained is now placed under the control of the poor law commissioners, who have power to introduce new rules from time to time as they may think fit, 4 & 5 Will. 4, c. 76, s. 15; see also s. 61, *Reg. v. St. Mary Magdalen, Bermondsey*, 2 Ell. & Bl. 809. By 7 & 8 Vict. c. 101, s. 12, the poor law commissioners are to prescribe the duties of masters of poor apprentices, and masters neglecting to fulfil them are liable to a penalty. The guardians of an union or parish are to bind poor children apprentices instead of the overseers. The 14 & 15 Vict. c. 11, provides for the better protection of apprentices under the care and control of others as apprentices, and enables the guardians and overseers of the poor to prosecute in certain cases.

By the 55 Geo. 3, c. 194, and 6 Geo. 4, c. 133, no person shall be admitted to any examination for a certificate of his qualification to act or practise as an apothecary, unless he shall produce proof to the court of examiners of his having served an apprenticeship of not less than five years to an apothecary, or to a member of the Royal College of Surgeons in London, Edinburgh or Dublin, or to a surgeon in his Majesty's army or navy. As to articles of Clerkship, see *post*, p. 301.

Qualification to be an apothecary.

3. One cannot be bound an apprentice without deed, 1 Salk. 68. By the 5 Eliz. c. 5, articles of apprenticeship are required to be indented, in the case of apprentices to husbandry, to owners of ships, fishers on the seas, &c.; and by the 43 Eliz. c. 2, also, in the case of apprentices put out by the parish; by the 54 Geo. 3, c. 46, indentures made according to the provisions of 5 Eliz. c. 4, which are otherwise valid, are to be so, notwithstanding the repeal of that statute. Although the 31 Geo. 2, c. 11, s. 2, has dispensed with the necessity of having the deed indented, it is still necessary that the binding should be by deed, *R. v. Inhabitants of Ditchingham*, 4 T. R. 769. By the 8 Ann. c. 9, s. 35, indentures must bear date the day they are executed.

Articles of apprenticeship by indenture.

By deed.

4. In London, and some other places, the indentures must be in-

Inrolment of indentures.

Apprenticeship. rolled before the chamberlain within a year, and the apprentice must be present at the enrolment and acknowledge them, Bac. Abr. Mast. and Ser. A.; 1 Mod. 271.

Stamp duty on indentures. 5. By the 55 Geo. 3, c. 184, indentures of apprenticeship must be impressed with the following stamp duties. If the premium be under 30*l.*, 1*l.*; if 30*l.* and under 50*l.*, 2*l.*; if 50*l.* and under 100*l.*, 3*l.*; if 100*l.* and under 200*l.*, 6*l.*; if 200*l.* and under 300*l.*, 12*l.*; if 300*l.* and under 400*l.*, 20*l.*; if 400*l.* and under 500*l.*, 25*l.*; if 500*l.* and under 600*l.*, 30*l.*; if 600*l.* and under 800*l.*, 40*l.*; if 800*l.* and under 1000*l.*, 50*l.*; if 1000*l.* and upwards, 60*l.*; and where there is no premium, and the instrument contains no more than 1080 words, 1*l.*; and if above that number of words, 1*l.* 15*s.* By the 13 & 14 Vict. c. 97, a progressive duty of 10*s.* is imposed for every entire quantity of 1080 words above the first 1080 words, with a proviso that no higher amount of progressive duty should be charged than was payable before the passing of the last-mentioned act. A duplicate is chargeable with a duty of 5*s.*, and a progressive stamp of 2*s.* 6*d.* for every entire quantity of 1080 words after the first 1080 words.

Where no sum of money or other matter or thing shall be paid, given, assigned or conveyed, or be secured to be paid, given, assigned or conveyed to or for the use or benefit of the master or mistress, with or in respect of any apprentice, clerk or servant, a duty of 2*s.* 6*d.* is imposed on the indenture or other instrument or writing containing the covenants, articles, or agreements for or relating to the service of any apprentice, clerk, or servant who shall be put or placed to or with any master or mistress, or to or with any new master or mistress, either by assignment, transfer, or turnover; or upon the death, absence, or incapacity of the former master or mistress, or otherwise to learn any profession, trade or employment whatsoever (except articles of clerkship or apprenticeship to any attorney or solicitor or other person in order to admission in any court or in any office in any court) or any writing whatsoever (except as aforesaid) whereby any such assignment, transfer or turnover, may be effectuated or ascertained. 16 & 17 Vict. c. 59, Sched. tit. APPRENTICESHIP.

All indentures of apprenticeship, bonds, contracts and agreements, entered into in the United Kingdom for or relating to the service in any of her Majesty's colonies or possessions abroad, of any person as an artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry or labourer, are exempted from all stamp duty. 17 & 18 Vict. c. 83, s. 21.

Exemption of parish indentures.

Indentures for placing out poor children apprentices, at the sole charge of any parish, or at the charge of any public charity, or pursuant to the 32 Geo. 3, for the further regulation of parish apprentices are exempt from all stamp duties. This exemption has been held not to be confined to mere compulsory bindings under the 42 Eliz. c. 2, but

extends to voluntary bindings, provided the premium is paid out of a fund raised at the public charge, *R. v. St. Petrox*, 4 T. R. 196; so indentures for placing out poor children at the charge of any public charity are by the same act exempt from stamp duty; and it has been held, that where a poor person was bound apprentice at the charge of a fund bequeathed to trustees for that purpose, it was not necessary that the trustees should be parties to the indentures, *R. v. Quainton*, 2 M. & S. 338; and a private agreement without the knowledge of the trustees between the master and a third person, whereby the latter agreed to pay for the clothing and washing of the apprentice, was held not to subject the indenture to the stamp duty. But the fund must be derived from a public and not a private charity, to bring it within the exemption, *R. v. St. Matthew (Bethnal Green)*, Burr. S. C. 574; S. C. 1 Const. 661; see also *R. v. Clifton*, Burr. S. C. 697; *R. v. Takenham*, 2 Ad. & E. 528; S. C. 4 Nev. & Man. 553.

The premium actually paid must, by the 8 Ann. c. 9, s. 39; 20 Geo. 2, c. 45, be truly set forth in the indenture, or otherwise it is void, *Jackson v. Warwicke*, 7 T. R. 121; but if the sum paid be less than that inserted, this will not vitiate the articles, *R. v. Inhabitants of Kensham*, 5 E. 309. But no indenture will, by 8 Ann. c. 9, s. 43, be admitted in evidence unless the party producing the same make oath that the sum inserted therein was all that was given or contracted for.

6. At common law, no person under the age of twenty-one can bind himself, for an infant can be bound by no covenant, except by the custom of London, where an infant above the age of fourteen may bind himself to a freeman, and it shall be as binding as if he were of full age, 2 Roll. Abr. 305; 1 Mod. 271. An apprentice is considered as freed from all liability to serve after he comes of age; but as those who engage for the infant are held to be bound by the covenants, care must be taken that the period expire at or before the apprentice attains the age of twenty-one, *Ex parte Davis*, 5 T. R. 715; *Cuming v. Hill*, 3 B. & Ald. 59. The apprentice must be a party to the indenture, although put out by the parent, 2 Salk. 479.

7. An apprenticeship is not assignable without the consent of the apprentice, Hob. 134; *Peck's Case*, 1 Salk. 66. By the custom of London, the executors of the master are bound, in case of his death, to place the apprentice with another master, *Peck's Case*, *ub. sup.* In cases where a master dies shortly after an apprentice has been bound to him, a court of equity will decree that part of the premium shall be refunded, 1 Vern. 460; *Hirst v. Tolson*, 2 Hall & T. 359, *post*, p. 304, n.; and where a master becomes bankrupt it will decree, that a proportion of the premium shall be considered as a debt, and proveable under the commission, although there be no

Apprenticeship.

Premium actually paid.

Infant cannot bind himself.

Apprenticeship how assignable.

Apprenticeship. agreement to that effect, Chit. 85; *Ex parte Sandby*, 1 Atk. 149. A master is entitled to the whole of the time of the apprentice, unless it be otherwise covenanted, *Thompson v. Havelock*, 1 Camp. 527. See Harrison's Dig. tit. APPRENTICE.

No. CXXXIV.

No. CXXXIV.

*Indentures.**Indentures of Apprenticeship.*Master cove-
nants to teach.

This (a) Indenture made the day (b) of in the year of our Lord Between (F.) of &c. of the one part (c) (Apprentice) son of the said (F.) of the second part and (M.) of &c. of the third part *Witnesseth* That in consideration of the (d) sum of £ to the said (M.) in hand &c. paid the receipt whereof &c. he doth hereby admit and acknowledge he the said (M.) *Doth* for himself his executors and administrators covenant promise and agree with and to the said (F.) to accept the said (A.) as his apprentice during the term of years in manner as follows That he the said (M.) shall and will according to the best of his power skill and knowledge (e) teach the said (A.) in the trade or business of [or "profession of "] and all and every thing relating thereto *And also* shall and will during the said term find and provide the said (A.) with good and sufficient diet lodging and washing fit for an apprentice (f) *And* the said (F.) and the said (A.) for themselves severally and for their several executors and administrators do and each of them doth covenant promise and agree with and to the said (M.) That the said (A.) from the date hereof during the term of years shall and will truly and faithfully serve the said (M.) as his apprentice and diligently attend to the said business at all times his secrets keep and his lawful commands willingly obey *And* shall not nor will absent himself from his master's service without the leave of the said (M.) nor do nor knowingly suffer any

And give
board, &c.Apprentice
covenants to
serve.

(a) When a deed indented is necessary, see *ante*, Pref. sect. 3.

(b) Respecting the date, *ib.*

(c) As to apprentice being a party, see *ante*, Pref. sect. 6.

(d) As to the stamp duty, see *ante*, Pref. sect. 5.

(e) Force of this word, see *ante*, Pref. sect. 1.

(f) If the apprenticeship be to a profession, as a surgeon, say, "And moreover shall and will permit and allow the said (A.) to walk or attend on days in the week or oftener if needful the hospital of at or attend any other lectures upon medicine surgery &c." As to the medical profession, see *ante*, Pref. sect. 2.

damage to be done to the goods monies or other things which shall be delivered or put into his custody or care *And* shall not embezzle waste or lend them to any one without his master's consent nor play at cards or other unlawful games nor haunt or frequent taverns but in all things shall and will demean and behave himself towards his master as a good and faithful apprentice ought (a) *And* the said (F.) doth hereby further agree that he shall and will at all times during the said term provide the said (A.) with suitable clothes both linen and woollen and all other necessities except board washing and lodging (b) *And* it is hereby declared and agreed by and between the parties hereto That in case the said (M.) shall happen to die in the first or second year from the date hereof the executors and administrators of the said (M.) shall pay the sum of £ out of the said sum of £ *And lastly* for the true performance &c. (Penal clause, see *post*, p. 300.)

No. CXXXIV.
Indentures of.

Father agrees to find clothes.

In case of master's death part of the fee to be repaid.

APPRENTICESHIPS TO THE SEA SERVICE.

- | | |
|--|--|
| <p>1. <i>Shipping Masters to assist in Binding Apprentices.</i></p> <p>2. <i>Indentures of Apprenticeship by Guardians to be witnessed by Two Justices.</i></p> <p>3. <i>Indentures of Apprenticeship to be exempt from Stamp Duty and recorded.</i></p> | <p>4. <i>Rules to govern Apprenticeship of Paupers.</i></p> <p>5. <i>Apprentices and their Indentures to be brought before Shipping Master before each Voyage in a Foreign-going Ship.</i></p> |
|--|--|

1. All shipping masters appointed under the Merchant Shipping Act, 1854, shall, if applied to for the purpose, give to any board of guardians, overseers, or other persons desirous of apprenticing boys to the sea service, and to masters and owners of ships requiring apprentices, such assistance as is in their power for facilitating the making of such apprenticeships, and may receive from persons availing themselves of such assistance such fees as may be determined in that behalf by the Board of Trade, with the concurrence, so far as relates to pauper apprentices in England, of the poor law board in England, and so far

Shipping Masters to assist in binding apprentices.

(a) As to this clause, see *ante*, Pref. sect. 6.

(b) As to the death of the master, and how much of the premium must be refunded, see *ante*, Pref. sect. 7.

To Sea Service. as relates to pauper apprentices in Ireland, of the poor law commissioners in Ireland. 17 & 18 Vict. c. 104, s. 141.

Indentures of apprenticeship by guardians to be witnessed by two justices. 2. In the case of every boy bound an apprentice to the sea service by any guardians or overseers of the poor, or other persons having the authority of guardians of the poor, the indentures shall be executed by the boy and the person to whom he is bound, in the presence of and shall be attested by two justices of the peace, who shall ascertain that the boy has consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom the boy is to be bound is a proper person for the purpose. 17 & 18 Vict. c. 104, s. 142.

Indentures of apprenticeship to be exempt from stamp duty and re-recorded. 3. All indentures of apprenticeship to the sea service shall be exempt from stamp duty, and all such indentures shall be in duplicate, and every person to whom any boy is bound as an apprentice to the sea service in the United Kingdom shall, within seven days after the execution of the indentures, take and transmit the same to the registrar-general of seamen, or to some shipping master, and the said registrar or shipping master shall retain and record one copy, and shall indorse on the other that the same has been recorded, and shall redeliver the same to the master of the apprentice, and whenever any such indenture is assigned or cancelled, and whenever any such apprentice dies or deserts, the master of the apprentice shall, within seven days after such assignment, cancellation, death, or desertion, if the same happens within the United Kingdom, or if the same happens elsewhere, so soon afterwards as circumstances permit, notify the same, either to the said registrar of seamen or to some shipping master, to be recorded, and every person who fails to comply with the provisions of this section shall incur a penalty not exceeding 10*l*. 16 & 17 Vict. c. 104, s. 143.

Rules to govern apprenticeship of paupers. 4. Subject to the above provisions, all apprenticeships to the sea service, made by any guardians or overseers of the poor, shall, if made in Great Britain, be made in the same manner and be subject to the same laws and regulations as other apprenticeships made by the same persons, and if made in Ireland, shall be subject to the rules contained in the act 17 & 18 Vict. c. 104, s. 144.

Apprentices and their indentures to be brought before shipping master before each voyage in a foreign-going ship. 5. The master of every foreign-going ship shall, before carrying any apprentice to sea, from any place in the United Kingdom, cause such apprentice to appear before the shipping master before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof (if any), and the name of such apprentice, with the date of the indenture and of the assignment or assignments thereof (if any), and the name of the port or ports at which the same have been registered shall be entered on the agreement, and for any default in obeying the provisions of this section the master shall for each offence incur a penalty not exceeding 5*l*. 17 & 18 Vict. c. 104, s. 145.

No. CXXXV.

Indenture of Apprenticeship to the Sea Service.

No. CXXXV.

*Indenture to
Sea Service.*

This Indenture made the day of one thousand
eight hundred and Between aged years a
native of in the county of of the first part of
 in the county of of the second part and (a)
of in the county of of the third part *Witnesseth*
That the said hereby voluntarily binds himself apprentice
unto the said his executors administrators and assigns
for the term of years from the date hereof *And* the
said apprentice hereby covenants that during such time the
said apprentice will faithfully serve his said master his executors
administrators and assigns and obey his and their lawful com-
mands and keep his and their secrets and will when required
give to him and them true accounts of his or their goods and
money which may be committed to the charge or come into the
hands of the said apprentice and will in case the said apprentice
enters her Majesty's service during the said term duly account
for and pay or cause to be paid to his said master his executors
administrators or assigns all such wages prize-money and other
monies as may become payable to the said apprentice for such
service and that the said apprentice will not during the said term
do any damage to his said master his executors administrators
or assigns nor will he consent to any such damage being done
by others but will if possible prevent the same and give warning
thereof and will not embezzle or waste the goods of his master
his executors administrators or assigns nor give or lend the same
to others without his or their license nor absent himself from his
or their service without leave nor frequent taverns or alehouses
unless upon his or their business nor play at unlawful games
In consideration whereof the said master hereby covenants with
the said apprentice that during the said term he the said master
his executors administrators and assigns will and shall use all
proper means to teach the said apprentice or cause him to be
taught the business of a seaman and provide the said apprentice
with sufficient meat drink lodging washing medicine and medical

(a) If there is a surety, his name is to be inserted here; but a surety is not essential. If there is not one, the part relating to him should be struck out.

No. CXXXV.
*Indenture to
 Sea Service.*

and surgical assistance and pay to the said apprentice the sum of in manner following (that is to say) the said apprentice providing for himself all sea-bedding wearing apparel and necessaries (except such as are hereinbefore specially agreed to be provided by the said master) *And it is hereby agreed* That if at any time during the said term the said master his executors administrators or assigns provide any necessary apparel or sea-bedding for the said apprentice he and they may deduct any sums properly expended thereon by him or them from the sums so agreed to be paid to the said apprentice as aforesaid *And* for the performance of the agreements herein contained each of them the said and *Doth* hereby bind himself his heirs executors and administrators unto the other of them his executors and administrators in the penal sum of and for the performance of the covenants on the part of the said apprentice herein contained the said (a) as surety doth hereby bind himself his heirs executors and administrators unto the said his executors and administrators in the penal sum of *Provided* that notwithstanding the penal stipulations herein contained any justice or justices of the peace may exercise such jurisdiction in respect of the said apprentice as he or they might have exercised if no such stipulations had been herein contained.

In witness whereof the said parties have hereunto set their hands and seals the day and year above written.

Signed sealed and delivered in the presence of

(L. S.) [*Master*].

(L. S.) [*Apprentice*].

(L. S.) [*Surety*].

Registered at the port of this
 day of 18

Signed

Note.—This indenture must be executed in duplicate, both copies must be taken to the registrar-general of seamen; or if in the out-ports to some shipping master; one copy will then be retained and recorded, and the other returned to the master with the necessary indorsement.

(a) See note (a), *ante*, p. 299.

CLERKSHIP TO AN ATTORNEY.

- | | |
|--|-----------------------------------|
| 1. <i>Articles of Clerkship necessary.</i> | 3. <i>Stamp Duty on Articles.</i> |
| 2. <i>Service required under Articles.</i> | |



1. No person is capable of being admitted and enrolled as an attorney or solicitor unless such person shall have been bound by contract in writing to serve as clerk for and during the term of five years to a practising attorney or solicitor in England or Wales, and shall have duly served under such contract for and during the said term of five years, and also, unless such person shall, after the expiration of the said term of five years, have been examined and sworn in the manner directed by the act 6 & 7 Vict. c. 73, s. 3. There is a provision as to clerks to attornies of the Court of Common Pleas of the county palatine of Lancaster, or the Court of Common Pleas of the county palatine of Durham. Articles of clerkship necessary.

2. Every artied clerk shall, during the whole time and term of service to be specified in such contract, continue and be actually employed by such attorney or solicitor in the proper business practice or employment of an attorney or solicitor, save only and except in the cases provided by the act. Id. s. 12. Service required under articles.

Persons bound for five years may serve one year with a barrister or special pleader and one year with a London agent, 6 & 7 Vict. c. 73, s. 6. Any person who has taken a degree of bachelor of arts within six years after his matriculation, or the degree of bachelor of laws, within eight years after his matriculation, at the university of Oxford, Cambridge, Dublin, Durham, or London, may act as an attorney or solicitor upon having served a clerkship, three years with an attorney, or part thereof not exceeding one year, with the London agent of the attorney. The period of five years is similarly shortened in favour of certain students of the Queen's colleges in Ireland attending lectures and passing examinations in the faculty of laws during two collegiate years. 14 & 15 Vict. c. 88, s. 2. An affidavit is to be made and filed within six months of execution of articles, and the articles to be enrolled; if not filed within six months the service to reckon from the day of filing, unless the Court shall otherwise direct. The affidavit is to be produced on applying for admission. A book is to be kept for entering the substance of affidavits, with the names, &c. of attorney and clerk, &c., which may be searched. 6 & 7 Vict. c. 73, ss. 8—11. Affidavit.

No attorney is to have more than two clerks at one time, or to take or retain any clerk after discontinuing business, nor whilst clerk to another. 6 & 7 Vict. c. 73, s. 4. In case an attorney become bankrupt or insolvent, or be imprisoned, any of the courts of law or

*Clerkship to
Attorney.*

equity wherein such attorney or solicitor is admitted, upon the application of the clerk, may order and direct the said contract to be discharged or assigned to such person, upon such terms, and in such manner as the said court shall think fit. 6 & 7 Vict. c. 73, s. 5.

Stamp duty on
articles.

See further, as to articles of clerkship, *AFFIDAVITS*, *ante*, pp. 45—50.

3. The stamp on articles of clerkship is 80*l.*, 16 & 17 Vict. c. 63, s. 1, Sched., and on the counterpart 5*l.*, with 2*s.* 6*d.* for every 1080 words above the first 1080 words.

The Treasury may authorize the commissioners of inland revenue to stamp articles of clerkship six months after the date thereof upon payment of the duty chargeable thereon, and of the penalty. 19 & 20 Vict. c. 81, s. 3. See 7 Geo. 4, c. 44.



No. CXXXVI.

*Articles of
Clerkship.*

No. CXXXVI.

*Articles of Clerkship.*Clerk cove-
nants to serve.

Articles of Agreement &c. Between (*Master*) of &c. gentleman one of the attornies of her Majesty's Courts of Queen's Bench and Common Pleas at Westminster and a solicitor in the High Court of Chancery of the one part and (*Father*) of &c. and (*Clerk*) son of the said (*F.*) of the other part *Witness* That the said (*C.*) of his own free will and by and with the consent and approbation of the said (*F.*) his father *Doth* by these presents put place and bind himself clerk to the said (*M.*) to serve him from the day of the date hereof for and during and until the full end and term of five years from hence next ensuing and fully to be complete and ended *And* the said (*F.*) doth hereby for himself his executors and administrators covenant and agree with the said (*M.*) his executors administrators and assigns in manner following (that is to say) *That* the said (*C.*) shall and will well faithfully and diligently serve the said (*M.*) as his clerk in the profession of an attorney at law and solicitor in Chancery from the day of the date hereof for and during the said term of five years and that he the said (*C.*) shall not at any time during the said term of five years cancel obliterate spoil destroy waste embezzle spend or make away with any of the books papers writings monies stamps or other property of the said (*M.*) his executors administrators or assigns or any of his clients or employers which shall be deposited in his hands or entrusted to his custody or possession or to the care custody or possession of the said (*C.*) and that in case the said (*C.*) shall act contrary to

Not to destroy
books or
papers.

the last mentioned covenant or if he the said (*M.*) his executors administrators or assigns shall sustain or suffer any loss damage or prejudice by the misbehaviour neglect or improper conduct of the said (*C.*) he the said (*F.*) his executors or administrators shall make good and reimburse him the said (*M.*) the amount and value thereof *And further* that he the said (*C.*) shall and will from time to time and at all times during the said term of five years keep the secrets of the said (*M.*) and readily and cheerfully obey and execute his lawful and reasonable commands and shall not depart or absent himself from the service or employ of the said (*M.*) during the said term without his consent first obtained but shall from time to time and at all times during the said term conduct himself with all due diligence honesty sobriety and temperance *And* that he the said (*F.*) his executors and administrators shall and will at all times during the said term at his and their proper costs and charges find and provide the said (*C.*) with all and all manner of necessary and becoming apparel and washing and also medicine surgery and medical advice and nursing in case of sickness *And* the said (*C.*) doth hereby for himself and on his part consent and agree to and with the said (*M.*) his executors administrators and assigns that he the said (*C.*) shall and will truly and honestly and diligently serve the said (*M.*) at all times for and during the said term as a faithful clerk ought to do in all things whatsoever in the manner above specified *In consideration* whereof and of the sum of £ sterling by the said (*F.*) to the said (*M.*) in hand paid at or before the sealing and delivery of these presents the receipt whereof the said (*M.*) doth hereby acknowledge and from the same sum and every part thereof doth hereby acquit release and discharge the said (*F.*) his executors and administrators and every of them he the said (*M.*) for himself his heirs executors and administrators doth hereby covenant promise and agree with and to the said (*F.*) *That* he the said (*M.*) shall and will accept and take the said (*C.*) as his clerk during the said term and find *and provide him with board and lodging [if so agreed]* *And also* shall and will by the best ways and means he may or can and to the utmost of his skill and knowledge teach and instruct or cause to be taught and instructed the said (*C.*) in the practice and profession of an attorney at law in the Courts at Westminster and solicitor in Chancery in such manner as he the said (*M.*) now doth or shall at any time practise and profess the same *And also* shall and will at the expiration of the said term certify the

No. CXXXVI.
*Articles of
Clerkship.*

Father to make
good any da-
mage.

Master cove-
nants to take
clerk.

To provide him
with board,
lodging and in-
struction.

To procure his
admittance as
an attorney, at
the expiration
of the clerk-
ship.

No. CXXXVI. time of service of him the said (C.) with him the said (M.) according to the general rules in such case made and provided and use his best endeavours at the request costs and charges of the said (F.) and (C.) or either of them to cause and procure him the said (C.) to be admitted and sworn an attorney of her Majesty's said Courts of Queen's Bench and Common Pleas or either of them and a solicitor of the High Court of Chancery or any other of her Majesty's courts of law or equity provided he the said (C.) shall have well faithfully and diligently served his said intended clerkship [*The following clause may be added when circumstances require it. Sect. 6 & 7 Vict. c. 73, ss. 6, 7.*] And shall and will permit and suffer the said (C.) to spend the last year (or the last two years if so agreed) of the said term with some practising barrister certificated special pleader or the London agent of the said (M.) or (if two years be agreed upon) as follows one year with some practising barrister or certificated special pleader in England or Wales and the other with the London agent of the said (M.) if he the said (C.) shall desire the same his journeys to and thence and residence there to be at his own expense [*A proviso for return of premium is sometimes added (a)*] *Provided always* and it is hereby agreed between the said (M.) his heirs executors and administrators and the said (F.) his executors or administrators That in case the said (M.) or the said (C.) shall depart this life within the three first years of the said term he the said (M.) his heirs executors or administrators will repay to the said (F.) his executors or administrators such portion of the said premium in manner hereinafter mentioned (that is to say) the sum of £ if the said (M.) or (C.) shall die before the expiration of the first year of the said term or the sum of £ if the said (M.) or (C.) shall die after the expiration of the first year but before the expiration of the second year of the said term or the sum of £ if the said (M.) or (C.) shall die after the expiration of the second year but before the expiration of the third year of the said term *In witness &c.*

(a) An attorney, to whom a clerk was articled, died before the articles expired. It was held that the Court of Chancery had jurisdiction to order part of the premium paid to the attorney to be repaid out of his assets, and that although he had covenanted to instruct the clerk or "cause him to be instructed," and his surviving partner had agreed with his executors to take the clerk for the remainder of his articles. *Hirst v. Tolson*, 2 Mac. & G. 134; 2 Hall & T. 359.

No. CXXXVII.

Assignment of an Apprenticeship.

No.
CXXXVII.
Assignment
(Apprentice).

1. *How assignable.*
2. *What necessary on Assignment.*
3. *Stamp Duty on Assignment.*



SECT. 1. An apprenticeship, being a personal trust, is not assignable at common law at the will of the master, *Corentry v. Woodhall*, Hob. 134; therefore an award that an apprentice should be assigned has been held to be void, *Horne v. Blake*, 2 Str. 1267; see further *ante*, Pref. sect. 7.

How assignable.

2. By the custom of London, an apprentice, when he is assigned over, must attend at the Chamberlain's Office, and the master must take his freedom with him. If the assignment is not passed at the office, it is void. If an apprentice be assigned by the representative of a deceased master, probate of administration must be produced.

What necessary on assignment.

3. The 55 Geo. 3, c. 184, imposes the same *ad valorem* duty on the assignment of an apprentice (not turned over by the parish), where there shall be a valuable consideration given, as was charged on the original indenture; where there is no consideration, the usual stamp of 1*l.*, or if the indenture contain more than 1080 words, 1*l.* 15*s.* By the act 13 & 14 Vict. c. 97, the progressive duty is reduced to 10*s.* for every entire quantity of 1080 words above the first 1080 words, with a proviso that a higher rate of progressive duty than under the old law shall not be charged. Where there are two parts, the duplicate requires a stamp of 5*s.*, and a progressive duty of 2*s.* 6*d.* for every entire 1080 words beyond the first 1080 words. The duplicate must have a denoting stamp. The part bearing the *ad valorem* duty to be kept by the former master or mistress, or the apprentice, and the counterpart by the new master or mistress. An agreement to assign an apprentice from one master to another must, by 23 Geo. 3, c. 58, be stamped as an agreement, *R. v. St. Paul's, Bedford*, 6 T. R. 452. See 16 & 17 Vict. c. 59, *ante*, p. 294.

Stamp duty on assignment.

This Indenture made &c. Between (*master*) of &c. and (*apprentice*) of the one part and (*new master*) of &c. of the other part *Whereas* (*A.*) son of A. B. of &c. by indenture bearing date &c. and made between &c. was duly bound to the said (*M.*) for the term of years commencing from the date thereof as by the said indenture will more fully appear *And whereas* it hath been agreed that the said (*A.*) shall serve out the remainder of his term of apprenticeship with the said (*N. M.*) and be by him fully taught and instructed in the trade business and manual

Recital of indenture of apprenticeship.

Of agreement to assign apprentice.

No.
CXXXVII.
Assignment
(Apprentice).
Assignment.

New master
agrees to per-
form the cove-
nants of the
indenture.

Apprentice
covenants to
serve new
master.

occupation of and the said (*M.*) hath thereupon agreed to assign the said (*A.*) as hereinafter is mentioned *Now &c.* in consideration of the agreement and other good causes and considerations him the said (*M.*) thereunto moving He the said (*M.*) doth by these presents grant assign and set over unto the said (*N. M.*) *All* such right title duty term of years yet to come and unexpired service and demand whatsoever which he the said (*M.*) hath in or to the said (*A.*) by virtue of the said indenture of apprenticeship or otherwise *To have and to hold* all such right, title duty term of years yet to come and unexpired service and demand whatsoever hereby assigned unto the said (*N. M.*) his executors administrators and assigns from henceforth for and during all the residue and remainder yet to come and unexpired of the said apprenticeship or term of years as aforesaid in as ample and beneficial a manner as he the said (*M.*) might or could have had or enjoyed the same if these presents had not been made Under and subject nevertheless to the covenants and agreements in the said in part recited indenture on the part and behalf of the said (*N. M.*) to be done and performed *And* the said (*N. M.*) for himself &c. hereby covenants &c. that he the said (*N. M.*) his executors &c. shall and will well and truly observe perform fulfil and keep the covenants and agreements in the said in part recited indenture of apprenticeship on the part and behalf of the said (*M.*) to be done and performed And the said (*A.*) doth hereby covenant with and to the said (*N. M.*) that he the said (*A.*) shall and will at all times during the residue of the said term of years now to come and unexpired well and truly serve the said (*N. M.*) as an apprentice in the said trade or business of in like manner in all respects as he has been bounden to do by the hereinbefore in part recited indenture *In witness &c.*



No.
CXXXVIII.
Clerkship.

No. CXXXVIII.

Assignment of Articles of Clerkship.

When articles
may be as-
signed.

Obs. If any attorney or solicitor to whom a clerk shall be bound shall die before the expiration of the term of clerkship, or shall discontinue or leave off practice as an attorney or solicitor, or if such contract shall, by mutual consent of the parties, be cancelled, or in case such clerk shall be legally discharged before the expiration of such term by

any rule or order of the court wherein such attorney or solicitor shall have been admitted, such clerk may, in any of the said cases, be bound by another contract or other contracts in writing to serve as clerk to any other practising attorney or solicitor, or attorneys or solicitors, during the residue of the said term and service under such second or other contract in manner required by the act will be effectual, provided that an affidavit be duly made and filed of the execution of such second or other contract or contracts within the time, and in the manner, and subject to the like regulations as are made with respect to the original contract and affidavit of the execution thereof. 6 & 7 Vict. c. 73, s. 13. (See Form of Affidavit, *ante*, No. XXI. p. 46.)

No.
CXXXVIII.
*Assignment
(Clerkship).*

*This Indenture made &c. Between (old master) of &c. of the first part (father) of &c. and (clerk) of &c. son of the said (F.) of the second part and (new master) of &c. an attorney of her Majesty's courts of &c. of the third part Whereas [recite articles of clerkship] Now &c. in consideration of the said covenants on the part and behalf of the (N. M.) hereinafter mentioned he the said (O. M.) at the request and by and with the consent and approbation of the said (F.) and (C.) testified by their being parties to and executing these presents doth hereby assign transfer and set over unto the said (N. M.) his executors administrators and assigns as well the said recited articles and all benefit whatsoever to be had or made thereof as also all the right interest property profit advantage claim and demand whatsoever and howsoever to arise be had or made to him the said (O. M.) from henceforth of the service of the said (C.) during the now residue of the said term of years by force or virtue of the said recited articles or otherwise howsoever Covenant by (F.) with (N. M.) (see *ante* p. 302) Covenant by (C.) with (N. M.) (*ante* p. 302) In consideration whereof he the said (N. M.) for himself &c. doth hereby covenant &c. with the said (F.) in manner &c. That he the said (N. M.) shall and will accept and take the said (C.) as his clerk during the residue of the said term of five years That he the said (N. M.) shall and will at all times during the said residue of &c. in the best manner he can instruct the said (C.) as his clerk in the business practised (*ante* p. 303) And also (if so agreed) that he the said (N. M.) his &c. shall and will from the day of the date hereof at his and their own costs and charges find allow and provide the said (C.) in competent and sufficient meat &c. and thereof and therefrom save harmless and indemnified the said (O. M.) his &c. And lastly each of them the said (O. M.) and (N. M.)*

Assignment.

Covenant from
new master.

No.
CXXXVIII.
Assignment
(Clerkship).

doth hereby severally covenant with the said (*F.*) that they the said (*O. M.*) and (*N. M.*) at the request cost and charges of the said (*F.*) or (*C.*) at any time after the expiration of the said term of years shall and will severally certify the respective times of service of him the said (*C.*) with them the said (*O. M.*) and (*N. M.*) according to the general rules in such case made and provided and also to procure admittance of (*C.*) (*ante* p. 303) *In witness &c.*

ARBITRATION.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. <i>Submission, how made.</i>
 <i>By Parol.</i>
 <i>By Deed.</i>
 <i>By Bond.</i> 2. <i>Parties to the Submission.</i> 3. <i>Force of an Agreement to refer to Arbitration.</i> 4. <i>What matters may be referred.</i> 5. <i>Extent of Submission.</i> 6. <i>Power of examining on Oath given to Arbitrators.</i> 7. <i>Agreement in Writing may be made Rule of Court, unless contrary intention appear.</i> | <ol style="list-style-type: none"> 8. <i>Time of making the Award.</i> 9. <i>Submission void or revoked.</i> 10. <i>Publication of an Award.</i> 11. <i>Costs of Reference.</i> 12. <i>Arbitrators, who may be Umpire.</i>
 <i>Appointment of Arbitrators or Umpire.</i> 13. <i>Proceedings of Arbitrators.</i> 14. <i>Requisites of an Award.</i> 15. <i>Award by Parol or by Deed.</i> 16. <i>Delivery of an Award.</i> 17. <i>Performance of an Award.</i> 18. <i>Stamp Duty.</i> |
|---|--|



Submission,
how made.

By parol.
By deed.

By bond.

SECT. 1. An agreement to refer any matter in dispute, commonly called a submission, may either be purely by the act of the parties themselves, or it may be by the interposition of a court of law. In the former case the submission may be by parol, but in the latter case it appears that a submission, unless in writing, cannot, by the 9 & 10 Will. 3, c. 15, be made a rule of court, *Sammways v. Elderley*, 2 Mod. 73; 7 Ves. 419; *Ansel v. Evans*, 7 T. R. 1. When the submission is in writing, it usually is with mutual covenants, under a penalty; sometimes by indenture or deed poll, or by bond, each party executing an obligation to the other, *Sammways v. Elderley*, 2 Mod. 73. When the accession of all parties to the reference is the consideration to each to execute the submission, it is not valid as to some who have executed it until all have done so, even although it purports to refer all matters in difference between them or any two of them, *Antram v. Chase*, 15 East, 209.

2. Every one who is capable of making a disposition of his property, or a release of his right, may be a party to a reference, but not such as are under any natural or civil disability, as *femes covert*s, infants, &c. An award made under a reference respecting freehold estates, where some of the parties to be bound by it were married women interested, is invalid, *Strachan v. Dougall*, 7 Moo. P. C. C. 365. A married woman may, however, be made a party to a submission in any matter affecting her separate property, *Bateman v. Countess of Ross*, Dow. 235. Those only who are parties to the submission shall be bound by it. But a man is bound by an award to which he submits for another, as a husband for his wife, Sty. 351; a guardian for an infant, Latch. 207; or one of many partners for the rest, 2 Mod. 228. See *Hatton v. Royle*, 3 H. & N. 500.

An attorney may submit to arbitration for his client, *Cayhill v. Fitzgerald*, 1 Wils. 28, 58; but a submission by bond binds himself, 12 Mod. 129. The attorney on the record has authority to refer the subject of the action to arbitration, *Paull v. Paull*, 2 Cr. & M. 235; *Filmer v. Dolbec*, 3 Taunt. 486; *Fariell v. Eastern Counties Railway Company*, 2 Exch. 344. If his client withdraws that authority from him, and the attorney, nevertheless, refer the cause, the validity of the reference cannot be disputed, upon showing cause against a rule for enforcing the award, and it seems that the client's only remedy is against his attorney, *Smith v. Troup*, 6 D. & L. 679; 7 C. B. 757. It has been said that a solicitor in a suit in Chancery has no such general authority, *Cobrell v. Child*, 1 Ch. Rep. 154, 86, but this has been doubted, Russ. on Arbitration, p. 30, 2nd edit.; *Furnival v. Bogle*, 4 Russell, 142. The attorney of a next friend in an action cannot bind the infant for whom the next friend acts, *Wrightson v. Bywater*, 3 M. & W. 205; *Biddell v. Dowse*, 6 B. & C. 255.

If an executor or administrator thinks fit to refer generally all matters in dispute to arbitration, without protesting against the reference being taken as an admission of assets, it will amount to such an admission, *Robson v. —*, 2 Rose, 50; *Barry v. Rush*, 1 T. R. 691; *Riddell v. Sutton*, 5 Bing. 200. The reference should leave the question of assets open, and the arbitrator should only be authorized to make an award so far as there are assets to perform it. See Wms. on Exors. Pt IV. Bk. 2, Ch. II. s. 1; Russ. on Arbitration, pp. 33—35, 2nd ed. Trustees, in submitting matters to arbitration, should in express terms exclude the construction of any personal liability, *Id.* 36.

The assignees of a bankrupt, with the leave of the Court of Bankruptcy, may submit to arbitration any difference or dispute between the assignees and any other person, for, or on account, or by reason of anything relating to the estate and effects of the bankrupt, 12 & 13 Vict. c. 106, s. 153. A reference by assignees generally of all

Arbitration.

Parties to the submission.

Attornies.

Executors and administrators.

Assignees of bankrupt.

Arbitration.

matters in dispute, without protesting against the reference being taken as an admission of assets, will amount to such an admission, in the same manner as it would in the case of an executor or administrator, *Robson v. ———*, 2 Rose, 50. The reference may be made a rule of a superior court of law, whether the agreement of reference contain a clause to that effect or not, 12 & 13 Vict. c. 106, s. 154.

Assignees of insolvent debtors.

The assignees of insolvent debtors may submit questions to arbitration with the consent of the major part, in value, of the creditors, and with the approbation of the court or of a commissioner, 1 & 2 Vict. c. 110, s. 51; 7 & 8 Vict. c. 96, s. 13; 5 & 6 Vict. c. 116; *Dod v. Herring*, 3 Sim. 143; 1 Russ. & M. 153.

There are many other statutes which authorize the reference of disputes to arbitration, as the Lands Clauses Consolidation Act, 1845, the Railways Clauses Consolidation Act, 1845. (See Russ. on Arbitration, pp. 39–44, 95–100, 2nd ed.)

Force of an agreement to refer to arbitration.

3. At common law, where a cause was depending, the submission might be made a rule of court before the trial. The 9 & 10 Will. 3 extends this privilege to parties where no action has been brought. As to the effect of an agreement or covenant to refer to arbitrators, it was formerly held, that such a reference was an implied stay of proceedings in a court of law, 1 Mod. 24; but it was afterwards determined by a rule of court, that no reference of a cause depending in the King's Bench should stay proceedings, unless it was expressed in the rule of reference to be agreed, that proceedings in that court should be stayed, 2 Ld Raym. 789; so likewise if no step has been taken towards a reference, a mere agreement to refer will be no bar to an action, *Kil v. Hollister*, 1 Wils. 129; it has been decided that the pendency of an arbitration cannot be pleaded in bar to an action of debt for the same demand, *Harris v. Reynolds*, 7 Q. B. 71; and it has been frequently held, that such an agreement will not oust the courts of law or equity of their jurisdiction, *Thompson v. Charnock*, 8 T. R. 139; *Street v. Rigby*, 6 Ves. 818; and an action is not maintainable on a covenant to refer disputes to arbitration, *Tattersall v. Groote*, 2 B. & P. 131; and even if it be expressly stipulated in the agreement, that there shall be no action or suit at law or in equity, it seems that a court of equity will not, except in particular cases, enforce specific performance of such an agreement, *Waters v. Taylor*, 15 Ves. 10; *Gourlay v. D. of Somerset*, 19 Ves. 430. If the agreement contain a stipulation that no action shall be brought, the court will, on application, stay the proceedings in any action contrary to the agreement, *Dicas v. Jay*, 6 Bing. 519; *Moscatti v. Lawson*, H. & W. 572. See *Sturgis v. Curzon*, 21 Law J., Exch. 38.

If action commenced by one party after all have agreed to

Whenever the parties to any deed or instrument in writing, to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them, or any of them, shall be

referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall, nevertheless, commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matter so agreed to be referred, or any of them, it shall be lawful for the court in which such action or suit is brought, or a judge thereof, on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration, according to such agreement as aforesaid, and that the defendant was, at the time of the bringing of such action or suit, and still is, ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such court or judge may seem fit: provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require, 17 & 18 Vict. c. 125, s. 11.

Arbitration.

arbitration,
court or judge
may stay pro-
ceedings.

4. The proper matters for arbitration are penal wrongs and uncertain obligations, as trespasses, reckonings, and the like, 9 Co. 78. Things in the realty may be submitted; for although no freehold can pass by the award, arbitrators may award that lands shall be conveyed, or that one party shall give the other a bond for quiet enjoyment and the like, Dy. 242; Bac. Abr. tit. Award, [A]. The question of compensation for a criminal offence can only be referred to arbitration, if the offence be one for which the injured party might recover damages, *Baker v. Townsend*, 7 Taunt. 422; *Keir v. Leeman*, 6 Q. B. 308. A reference on the trial of an indictment, where the question was the liability to repair a highway *ratione tenuræ* was held to be illegal, although the submission had been made a rule of court according to agreement, *Reg. v. Blakemore*, 14 Q. B. 544. See *Reg. v. Hardey*, 14 Q. B. 529.

What matters
may be re-
ferred.

5. The extent of the submission may be various, according to the pleasure of the parties, as of one particular matter only, or of many or every subject of litigation between them, which ought to be carefully expressed in the submission, to avoid ambiguity. A submission "of all matters in difference between the parties in the cause," and one "of all matters in difference in the cause between the parties," is not the same thing. By the former mode of expression, the submission is not confined to the subject-matter of the particular action, as it is by the latter, *Malcolm v. Fullarton*, 2 T. R. 45. See Russ. on Arbitration, pp. 118—130, 2nd ed.

Extent of sub-
mission.

6. When in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made

Power of
examining on
oath given to
arbitrators.

Arbitration.

a rule of court, it shall be ordered or *agreed* that the witnesses upon such reference shall be examined upon oath, the arbitrator or umpire, or any one arbitrator may administer an oath to such witnesses, or take their affirmation, in cases where an affirmation is allowed by law instead of an oath, 3 & 4 Will. 4, c. 42, s. 41. By 14 & 15 Vict. c. 99, s. 16, every court, judge, justice, officer, commissioner, *arbitrator*, or other person then or thereafter having by law or by consent of parties authority to hear, receive, and examine evidence, are empowered to administer an oath to all such witnesses as are legally called before them respectively.

Power to compel the attendance of witnesses.

When any reference shall have been made by any submission containing an agreement to make it a rule of court, the court, which shall be mentioned in such agreement, may, by rule or order, command the attendance and examination of any person to be named, or the production of any documents to be mentioned in any such rule or order, and the disobedience to any such rule or order will be a contempt of court, if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire before whom the attendance is required, shall also be served, either together with or after the service of such rule or order. Every person whose attendance shall be so required is entitled to the like conduct money, and the payment of expenses, and for loss of time, as upon attendance at any trial, 3 & 4 Will. 4, c. 42, s. 40.

Arbitrator may state special case.

It shall be lawful for the arbitrator, upon any compulsory reference under the act, or upon any reference by consent of parties, where the submission is or may be made a rule or order of any of the superior courts of law or equity at Westminster, if he shall think fit, and, if it is not provided to the contrary, to state his award as to the whole or any part thereof, in the form of a special case, for the opinion of the court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the court, 17 & 18 Vict. c. 125, s. 5.

Stating case for the opinion of the court.

In a special case, stated under the 5th section, the arbitrator must state whether the arbitration is under a compulsory reference under the act, or whether it is upon a reference by consent of the parties when the submission has been or is to be made a rule or order of one of the superior courts of law or equity. In the former case the award must be intitled in the court and cause, and the rule or order of the court must be set forth. In the latter case, the terms of the reference relating to the submission, being made a rule or order of court, must be set forth, Reg. Gen. M. Vac. 1854; 14 C. B. 778; 10 Exch. 403; 4 Ell. & Bl. 368.

Proceedings before, and power of arbitrator.

The proceedings upon any such arbitration as aforesaid, except otherwise directed by that act, or by *the submission or document* authorizing the reference, are to be conducted in like manner, and

subject to the same rules and enactments as to the power of the arbitrator and of the court, the attendance of witnesses, the production of documents enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of court or judge's order, 17 & 18 Vict. c. 125, s. 7. This section applies to all the cases of arbitration mentioned previously in the 5th section, and is not limited in its application to the compulsory references mentioned in the 6th section, *In re Morris*, 6 Ell. & Bl. 383. See Russ. on Arbitration, pp. 179—181.

Arbitration.

The Court of Chancery has the same jurisdiction over arbitrators and awards, under the Common Law Procedure Act, 1854, as the Court of Common Law, *In re Aithen*, 3 Jur. (N. S.) 1296.

7. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the superior courts of law or equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court, and if, in any such agreement or submission, it is provided that the same shall or may be made a rule of one in particular of such superior courts, it may be made a rule of that court only, and if, when there is no such provision, a case be stated in the award for the opinion of one of the superior courts, and such court be specified in the award and the document authorizing the reference have not before the publication of the award to the parties been made a rule of court, such document may be made a rule only of the court specified in the award, and when in any case the document authorizing the reference is or has been made a rule or order of any one of such superior courts, no other of such courts shall have any jurisdiction to entertain any motion respecting the arbitration or award, 17 & 18 Vict. c. 125, s. 17.

Agreement or submission in writing may be made rule of court, unless a contrary intention appear.

8. It is proper to fix the time within which the arbitrators shall pronounce their award; but where the submission limits no time, it shall be understood to be made within a convenient time. If by the terms of the submission the arbitrator be enabled, as he frequently is, to enlarge the time for making his award, he may enlarge it more than once, *Barrett v. Parry*, 4 Taunt. 658. The arbitrator acting under any document authorizing the reference, or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award, and the superior court of which such submission, document, or order, is made a rule or order,

Time of making the award.

Award to be made in three months, unless parties or court enlarge time.

Arbitration.

or any judge thereof for good cause to be stated in the rule or order for enlargement, from time to time may enlarge the term for making the award; and if no period be stated for the enlargement, in such consent or order for enlargement, it is to be deemed an enlargement for one month; and in any case where an umpire shall have been appointed, he may enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire, a notice in writing, stating that they cannot agree. 17 & 18 Viet. c. 125, s. 15. See *In re Burdon*, 27 L. J., C. P. 250.

Power to send
back to arbi-
tration.

In any case where reference shall be made to arbitration as aforesaid, the court or a judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the said arbitrator upon such terms as to costs and otherwise as to the court or judge may seem proper. 17 & 18 Viet. c. 125, s. 8.

This section applies to references authorized by a submission containing a clause that it may be made a rule of court, and not expressly excluding such power. The section is not confined to compulsory references under the powers of the act, *In re Morris*, 6 Ell. & Bl. 333.

Submission
void or re-
voked.

9. The submission in general becomes void by the death of either of the parties, *Potts v. Ward*, 1 Marsh. 366; unless there is a special provision to keep alive the authority of the arbitrator, *McDougall v. Robertson*, 4 Bing 435; *Dowse v. Cox*, 3 Bing. 20; and might also be revoked by either party previous to the award being made and delivered, *Clapham v. Higham*, 7 B. Moore, 403; *S. C.* 1 Bing. 87. If the submission be by parol, the revocation may be by parol also, 2 Keb. 64; but where the submission is by deed, the revocation must be of as high a nature as the submission, 8 Co. 80 b; *Milne v. Greatrix*, 7 East, 607; *Shee v. Coran*, 10 B. & C. 485. See Russ. on Arbitration, pp. 150—152. The power and authority of any arbitrator or umpire appointed by or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of court, is not revocable by any party to such reference without the leave of the court mentioned in such submission, or by leave of a judge, and the arbitrator or umpire may proceed with the reference, notwithstanding any such revocation, and may make such award, although the person making such revocation shall not afterwards attend the reference, and the court or any judge thereof may from time to time enlarge the term for any such arbitrator making his award; 3 & 4 Will. 4, c. 42, s. 39. Shadwell, V. C., was of opinion that the provisions of this statute, as to arbitration, apply only to courts of law, *Hall v. Ellis*, 9 Sim. 530. See Russ. on Arbitration, pp. 154, 155, 2nd edit. There may also be a virtual as well as an express revocation; as if a *feme sole* submit to arbi-

Submission to
arbitration by
rule of court,
&c. not to be
revocable with-
out leave of the
court.

tration, and marry before the award is delivered, the marriage is in effect a revocation, 2 Keb. 8, 65; 1 Bac. Abr. 483. In all cases of revocation where the submission is by bond, the bond is forfeited, 1 Brownl. 62.

10. It is usual to insert in the submission the words "so as the arbitrator shall make and publish his award in writing, ready to be delivered to the parties at their request on or before a certain day." An award is to be considered as published when the parties have notice that it is ready for delivery on payment of the reasonable charges, *Musslebrook v. Dunkin*, 9 Bing. 605; *S. C.* 2 M. & Sc. 740; 1 D. P. C. 722; *Brown v. Varson*, 4 East, 584.

11. Arbitrators cannot award the costs of reference, unless such power be given to them for that purpose in the submission, 1 Cowp. 127; *Whitehead v. Firth*, 12 East, 166; and therefore where it is agreed that all the costs shall abide the event of the award, the arbitrator can make no award respecting the costs. *Boodle v. Davis*, 4 Nev. & Man. 788. See *Reynolds v. Harris*, 3 C. B. (N. S.) 267. If no direction be given respecting the costs of the award, they are to be paid by both parties equally, *Grove v. Cox*, 1 Taunt. 165. The more usual way is to provide in the submission, that the costs shall be in the discretion of the arbitrator. Where a cause has been referred, and an award made, the court will review the taxation of the costs between party and party, if they think the charges made by the arbitrator, even though a barrister, are excessive, *Webb v. Wyatt*, 3 Jur., N. S. 496. See *Barnes v. Hayward*, 1 H. & N. 742; *Barnes v. Braithwaite*, 2 H. & N. 569.

12. As an arbitrator is appointed at the discretion of the parties, any one whom the law supposes free, and capable of judging, may be chosen, even although he may be an interested party himself, or related to the opposite party, Comb. 218, unless his interest in the subject of reference or connexion with the opposite party was unknown at the time, 2 Vern. 251. See Russ. on Arbitration, pp. 108, 109, 2nd ed. Where there are two arbitrators only, and they cannot agree, it is usual to provide that a third person should be chosen, who is called the umpire, whose nomination is either made by the parties themselves at the time of the submission, or left to the discretion of the arbitrators. In this latter case, it has been held, that if the arbitrators elected one who refused to accept the office, they could not elect another, 1 Ld. Raym. 222; but the better opinion appears to be, that the arbitrators in such case have the power of election, Com. Dig. Arbit. [F.]. See Russ. on Arbitration, p. 228. It may, however, be safer to provide against such an event by express stipulation. If the arbitrators make the appointment conditional on acceptance, it is clear their power to make a second appointment remains in case of a refusal by the party first selected, *Ib.* The appointment of an um-

Arbitration.

Publication of an award.

Costs of reference.

Arbitrators, who may be.

Umpire.

Arbitration.

pire is mostly under hand only, and in that case does not require any stamp, *Routledge v. Thornton*, 4 Taunt. 704.

If the submission provide no special form of appointment of the umpire, a parol appointment is sufficient, *Oliver v. Collins*, 11 East, 367. Where the submission contains a direction as to the mode in which the umpire is to be appointed, it should be strictly followed.

On failure of parties or arbitrators, judges may appoint single arbitrator or umpire.

If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or, if where the parties or two arbitrators are at liberty to appoint an umpire, or third arbitrator, such parties or arbitrators do not appoint an umpire, or third arbitrator; or if any appointed umpire, or third arbitrator refuse to act or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator, respectively; and if within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator, be appointed, it shall be lawful for any judge of any of the superior courts of law or equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator, as the case may be, and such arbitrator, umpire, and third arbitrator, respectively, shall have the like power to act in the reference, and make an award as if he had been appointed by consent of all parties. 17 & 18 Viet. c. 125, s. 12. See *Collins v. Collins*, 5 Jur., N. S. 30.

When reference is to two arbitrators, and one party fails to appoint, other party may appoint arbitrator to act alone.

When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him to substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied, and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint, with notice, in writing, to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent,

provided, however, that the court or a judge may revoke such appointment on such terms as shall seem just. 17 & 18 Vict. c. 125, s. 13.

Arbitration.

When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner. 17 & 18 Vict. c. 125, s. 14.

Two arbitrators may appoint umpire.

13. Arbitrators cannot reserve to themselves an authority to decide at a future period any point relating to the matter referred to them, *Palm*. 145; 12 Mod. 139. Nor can they delegate their authority to others, *Lingood v. Earle*, 2 Atk. 504; but where arbitrators award the substance of a thing to be done, they may refer it to others who are competent to settle the manner in which it shall be put into execution, *Ib.* 501; *Emery v. Wase*, 5 Ves. 846. Likewise arbitrators deriving their authority from the submission, their decision must not extend to persons and things beyond the scope of the submission, 2 Mod. 309. See *Angus v. Redford*, 11 M. & W. 69. In any case of flagrant misconduct on the part of an arbitrator, the injured party may maintain an action against him to recover a compensation in damages, 2 Wils. 148; or file a bill against him in equity, to charge them with costs, in consequence of their fraudulent misbehaviour, *Lonsdale v. Littledale*, 2 Ves. jun. 453. See *Russ. on Arbitration*, pp. 458—460, 2nd ed.

Proceedings of arbitrators.

14. As to the requisites of an award, see *post*, AWARD, p. 331.

Requisites of an award.

15. An award may be either by parol or by deed, 1 Salk. 75. If by the terms of the submission the award must be under the hands and seals of the arbitrators, sealing only is not sufficient, *Palm*. 109.

Award by parol or by deed.

16. An award takes effect from the time of delivery, not from the day of the date, 3 Bulstr. 313. If an award be ready for delivery on a certain day, fixed in the submission, it is sufficient, although no delivery be made, *Brown v. Vanser*, 4 East, 584.

Delivery of an award.

17. Where parties bind themselves jointly and severally to perform an award, and two or more parties on one side be ordered to pay any sum of money, or do any particular act, each is answerable for the obedience of the others, *Mansell v. Burridge*, 7 T. R. 352. If no time be limited for the performance of what is directed to be done, it must be performed within a reasonable time, *Jenk.* 136. If a thing is awarded to be done within a certain day after the date of the award, and it has no date, the day of delivery must be adopted in its place, *Armit v. Breame*, 1d. Raym. 1076. Executors must obey the directions of an award, although not named in it, 2 Vent. 249. Where the submission is the mere act of the party, whether by parol or by obligation, performance may be enforced by an action upon the

Performance of an award.

Arbitration.

award or the submission, 1 Leon. 72; 1 Ld. Raym. 122. If the submission be made a rule of court, non-performance is a contempt, and obedience to it may be enforced by attachment, otherwise the party may have his remedy by action, 1 Saund. 326; Stra. 695; Tidd's Pract. 834. When the payment of money only is awarded, application ought to be made to a court of law for enforcing payment; but where anything is directed to be done in specie, as to convey an estate, a bill in equity for specific performance will lie, *Hall v. Hardy*, 3 P. Wms. 187. But now a rule to deliver possession of land, pursuant to an award, may be enforced as a judgment in ejectment. 17 & 18 Vict. c. 125, s. 16.

Stamp duty.

18. As to the stamp duty on the arbitration bond, see *post*, BOND, p. 322; on award, see *post*, AWARD, p. 332.

See further as to Arbitration, *Watson on Arbitration and Awards*, 3rd ed.; *Russell on Arbitration*, 2nd ed.

No. CXXXIX.

*Agreement to
refer Disputes.*

No. CXXXIX.

Agreement to refer Disputes to Arbitration.

Obs. This requires an agreement stamp, if under hand only. But no stamp is necessary if the reference is concerning a matter under the value of 20l., *Lloyd v. Mansell*, 19 L. J., Q. B. 192. Where several persons enter into an agreement to refer a matter to arbitration, such agreement and the award require each but one stamp, *Goodson v. Forbes*, 6 Taunt. 171; *S. C.* 1 Marsh. 525; *Stephens v. Lowe*, 9 Bing. 32.

Recital of disputes.

Articles of (a) Agreement &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part. *Whereas* disputes have arisen between the said parties hereto touching the several rights titles claims and demands as well of in and to a certain messuage or tenement situated &c. as of in and to a certain pew made by the said A. B. and situated &c. *Now therefore* for the final ending all such questions and disputes it is hereby agreed by and between the said parties that the rights titles claims and demands of the said A. B. of in to and out of the same premises or any part thereof shall be and are hereby referred to the award order and final determination of (*arbitrators*) And the award of the said (*A.*) if made in writing under their hands (*b*) and seals ready (*b*) to be delivered on or before the

Agreement to refer disputes to arbitration.

Delivery of award.

(*a*) As to the effect of an agreement to refer, see *ante*, Pref. sect. 3.

(*b*) As to the form of the award, see *ante*, Pref. sect. 14, and delivery, sect. 16, and the time of delivery, sect. 8.

(a) day of now next shall be binding and conclusive on all the parties And that for the better enforcing the performance and observance of such award the reference shall be made a rule (b) of her Majesty's Court of Queen's Bench at Westminster at the instance of either the said parties hereto without any notice to the other of them And further That the said parties hereto and each and every of them shall and will produce unto and deposit with the said (A.) all deeds evidences and writings relating to the premises in question in their respective possession or power And that each of them shall and will submit to be examined (c) upon oath and will as far as in them lies respectively do all such other acts and things as the said (A.) shall require for the better enabling them to make the said award That it shall be lawful for the said (arbitrators) from time to time by any writing or writings under their hands and endorsed upon these presents to enlarge the time for making their award in the said matters in difference so as the last extension of the time for making the said award does not exceed the day of which will be in the year of our Lord That it shall be lawful for the said (arbitrators) to proceed *ex parte* in the said several matters so referred to them in case of the non-attendance of either of the said parties hereto after days previous notice in writing being given him for that purpose or left at his usual place of abode And further That in case the said (A.) shall not agree upon the said award or determination that it shall be lawful (d) for the said (A.) and they are hereby expressly empowered by writing under their respective hands to appoint another indifferent person to be umpire in or to concur and join with them in considering and determining all or any of the premises hereby referred to them And further That all (e) costs and charges attending the said arbitration shall be in the discretion of the said (A.) and shall be paid and satisfied pursuant to their award That they the said parties hereto respectively and their respective executors and administrators shall and will well and truly keep observe and perform

No. CXXXIX.
Agreement to refer Disputes.
Reference to be made a rule of court.
Parties to produce deeds, &c.
Parties witnesses to be examined on oath.
Power to arbitrators to enlarge time.
Power to proceed *ex parte*.
Umpire to be chosen.
Costs at discretion of arbitrators.
To keep the award.

(a) See *ante*, n. (b), p. 318.

(b) See *ante*, sect. 7, p. 313.

(c) As to the examination and attendance of witnesses, see sect. 6.

(d) See sect. 12, pp. 315—317.

(e) Or, if it be so agreed, "all costs and charges attending the said arbitration shall be equally borne and discharged by the said parties to these presents, see sect. 11, p. 315.

No. CXXXIX. the award order and final arbitrament of the said (*arbitrators*)
Agreement to or of such other person as they shall appoint as hereinbefore is
refer Disputes. mentioned respecting all the matters so referred to them as
 aforesaid so as the said award shall be delivered to the said
 parties at the time and in the manner hereinbefore mentioned
 Neither party *And* that neither of the said parties shall (*a*) bring or prosecute
 to bring any any writ of error or any action or suit at law or in equity against
 action or suit. the other of them or against the said (*A.*) or umpire concerning
 the matters referred *In witness* whereof the said parties have
 hereunto set their hands the day and year first above written.



No. CXL.

*Submission by
 Indenture.*

No. CXL.

Submission by Indenture.

Recital of
 agreement to
 refer.

This Indenture made &c. Between A. B. of &c. of the one
 part and C. D. of &c. of the other part *Whereas* differ-
 ences and disputes have arisen and are still depending between
 the said A. B. and C. D. touching [*here shortly state the matters*]
 And in order to put an end to the said differences and dis-
 putes [and to obtain an amicable adjustment thereof] the said
 parties have and each of them hath agreed to refer the same to
 the award of E. F. of &c. and G. H. of &c. arbitrators indiffer-
 ently elected and named to arbitrate award order judge and
 determine of and concerning the said differences and disputes
 between the said parties respectively *Now this Indenture wit-
 nesseseth* That they the said A. B. and C. D. doth each for himself
 severally and respectively and for his several and respective
 heirs executors and administrators covenant and agree with the
 other his heirs executors and administrators respectively to stand
 to abide by observe and perform the award and determination of
 the said (*arbitrators*) indifferently elected &c. to arbitrate &c. of
 and concerning all and all manner of actions &c. [see *next pre-
 cedent*] touching the premises or any thing in any wise relating
 thereto (*b*) so as the said award of the said arbitrators or any
 two of them be made &c. [*This clause should sometimes be
 added*] That the submission hereby made shall not be defeated
 or affected by the death of the said parties or any of them
 pending the same but shall and may be proceeded in and the

Death of party
 not to affect
 reference.

(*a*) See sect. 3, p. 310.

(*b*) As to the extent of the submission, see sect. 5, p. 311.

matters in difference determined in the same manner as if the award of the said arbitrators had been made or determined in the lifetime of the party or parties so dying And the executor or administrator executors or administrators of the party or parties so dying shall be deemed and considered to be a party or parties to the reference or submission hereby made any rule of law or equity to the contrary notwithstanding [*Where each party has appointed an arbitrator the following clause may in some cases be added*] *That* in case the said E. F. shall die or refuse or become incapable to act as arbitrator before the whole of the premises hereby referred shall be determined by the said arbitrators or their umpire *Then* the said A. B. his heirs executors or administrators shall forthwith thereafter nominate and appoint some other fit and indifferent person to be arbitrator in the stead and place of the said E. F. And so in like manner upon the decease or neglect or refusal to act of any arbitrator succeeding to the place of the said E. F. [*A similar clause should be inserted as to the arbitrator appointed by C. D., then let it conclude*] *That* every arbitrator so to be appointed as a substitute for the said arbitrator or any succeeding arbitrator shall have the same powers and authorities as the arbitrator for whom the substitution is made would have had had he continued to act [*This may follow the preceding clause*] *That* if the said A. B. or C. D. or their heirs executors or administrators or any of them respectively when bound to appoint a new arbitrator pursuant to the above provisions in lieu of any arbitrator who may die refuse to act or become incapable shall neglect or refuse so to do for one and twenty days after a notice in writing on the part of the party or parties entitled to require such appointment then the latter party or parties shall pay to the former party or parties the sum of £ by way of liquidated damages for such neglect or refusal *And* it is also agreed &c. by and between the said parties [*submission to be made a rule of court, see last precedent*] *And* the said parties do hereby further agree that none of them shall or will prosecute any action or suit in any court of law or equity against the said (A.) any or either of them or bring or prefer any bill in equity against each other of and concerning the premises until the said award be made and delivered *And also* that all costs and charges attending the present arbitration shall be in the discretion of the said (A.) or any two of them and paid and satisfied pursuant to their award *And further* that the said parties &c. [*produce deeds &c. see last precedent*] *In witness &c.*

No. CXL.
*Submission by
Indenture.*

Provisions for
appointing new
arbitrators.

Liquidated
damages for re-
fusing to ap-
point new
arbitrator.

Neither party
to bring any
action or suit.

No. CXLI.

Bond.

No. CXLI.

Arbitration Bond.

Stamp duty.

Obs. An arbitration bond requires a stamp of 1*l.* 15*s.* and a further progressive duty of 2*s.* 6*d.* for every 1080 words above the first 1080; but where on the fly leaf of an arbitration bond was an indorsement bearing date after the time limited by the bond for making the award, and stating that the parties within named had met that day by consent on the award, this was held to be a new agreement to refer, and was not admissible in evidence without a stamp, *Stephens v. Lowe*, 9 Bing. 32; *S. C.* 2 M. & Sc. 44. An agreement stamp is, however, not necessary to an arbitration bond, containing, besides the usual covenants, an agreement as to the payment of costs, *Wansborough v. Dyer*, 2 Chit. 40.

Know all Men That I A. B. of &c. am held and firmly bound to C. D. of &c. in the sum of £ of lawful money of Great Britain to be paid to the said C. D. or to his certain attorney executors administrators or assigns for which payment well and truly to be made I bind myself my heirs executors and administrators firmly by these presents Sealed with my seal Dated the day of in the year of our Lord

Whereas differences have arisen and are depending between the above bounden A. B. and the above named C. D. concerning the occupation management and cultivation by the said C. D. of a certain farm situate at in the county of the property of the said A. B. lately held by the said C. D. as tenant to the said A. B. and also concerning the payment of the several sums of money paid laid out and expended by the said A. B. for ploughing harrowing and manuring &c. previous to the said C. D. entering upon the same as tenant and likewise concerning the rent payable in respect of the said farm from the said C. D. and all which differences and demands concerning the same the said parties have agreed to refer to the award judgment and determination of (*arbitrators*) arbitrators indifferently chosen by and between the said parties to award arbitrate and determine concerning the same and in case the said arbitrators cannot determine the same within the time hereunder limited then to the umpirage of a third person to be by the said (A.) chosen as umpire *Now therefore* the condition of the above written bond or obligation is such that if the above bounden A. B. his heirs executors and administrators and every of them

Recital of
agreement to
refer disputes
to the arbitra-
tion of arbitra-
tors,

or umpire.
Condition.

do and shall on his and their part and behalf in all things well and truly stand to observe perform fulfil and keep the award arbitration final end and determination of (A.) arbitrators indifferently chosen to arbitrate award adjudge and determine upon and concerning the occupancy and management of the said farm and the sum laid out by the said A. B. in the cultivation of the same and the rent payable in respect of the same and also touching and concerning all and all manner of actions causes of action suits [bills bonds specialties covenants contracts promises accounts reckonings judgments executions extents quarrels controversies trespasses] damages and demands whatsoever both at law and in equity had moved brought commenced sued prosecuted done suffered or committed by or between the said parties so as the award of the said (A.) or any two of them be made in writing under their hands and seals ready to be delivered to the said parties in difference on or before the day of

And if the said (A.) shall not make such their award of and concerning the premises within the time limited as aforesaid Then if the said A. B. his heirs executors and administrators and every of them on his and their part and behalf do and shall well and truly stand to abide by observe perform and keep the award order arbitrament umpirage final end and determination of the said (*umpire*) being a person indifferently named and chosen by the said parties as umpire in and concerning the premises so as the said (U.) do make and publish his award and umpirage in writing under his hand and seal ready to be delivered to the said parties in difference on or before the day of (a) Then this obligation to be void or else to remain in full force and virtue.

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No. CXLII.

Order of Submission by Judge.

A. B. v. C. D. Upon hearing the attorneys on both sides and by their consent I do order that this cause, [“and all other

(a) Here may be added, if necessary, “*And it is further agreed by and between the said A. B. and C. D. that, &c. (witnesses to be examined on oath, &c., ante, p. 319) And also that the costs &c. shall be in the discretion of the referees &c. And further (submission to be made a rule of court, &c.) And it is further agreed &c. (add any other provisions which may be necessary).*” See *ante*, pp. 319—321.

No. CXLII.

Bond.

No. CXLII.

*Submission by
Judge's Order.*

No. CXLII.
*Submission by
 Judge's Order.*

matters in difference between the parties"] be referred to the award order arbitrament final end and determination of E. F. of &c. barrister at law so as he shall make and publish his award in writing of and concerning the matters referred ready to be delivered to the said parties in difference or such of them as shall require the same [*or* to their respective personal representatives if either of the said parties shall die before the making of the said award] on or before the day of now next ensuing or on or before any other day to which the said arbitrator shall by any writing to be endorsed hereon from time to time enlarge the time for making the said award And by the like consent I further order that the said parties shall in all things abide by perform fulfil and keep such award so to be made as aforesaid and that the costs of the said cause and the costs of the reference and award shall be in the discretion of the said arbitrator And by the like consent I further order that the said arbitrator shall be at liberty (if he shall think fit) to examine the said parties to this suit and their respective witnesses upon oath or affirmation and that the said parties do and shall produce before the said arbitrator all books deeds papers and writings in their or either of their custody or power relating to the matters in difference And I further order by and with such consent as aforesaid that neither the plaintiff nor the defendant shall bring or prosecute any action or suit at law or in equity against the said arbitrator or bring any writ of error or prefer any bill in equity against each other of and concerning the matters so as aforesaid referred and that if either party shall by affected delay or otherwise wilfully prevent the said arbitrator from making an award he shall pay such costs to the other as the Court of Queen's Bench shall think reasonable and just And by the like consent I further order that in the event of either of the said parties disputing the validity of the said award so to be made and published as aforesaid or moving the court to set the same aside this court shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the said arbitrator And by the like consent I further order that this order shall and may be made a rule of her Majesty's Court of Queen's Bench if the same court shall so please Dated the day of 18 .



No. CXLIII.

No. CXLIII.

Rule of Reference at Nisi Prius when a Juror is withdrawn.

*Rule of
Reference at
Nisi Prius.*

London to wit At the sitting of *Nisi Prius* held at Guildhall in and for the city of London on &c. and in the year of the reign of our sovereign &c. before the Right Honorable Chief Justice of our Lady the Queen assigned to hold the Pleas before himself.

B. v. S.—It is ordered by the court by and with the consent of the plaintiff and defendant their counsel and attornies that the last juryman sworn and impanelled in the cause be withdrawn out of the panel, and that all matters in difference between the said parties be referred to the award order arbitrament final end and determination of F. C. of the Inner Temple Esquire so as he shall make and publish his award in writing of and concerning the premises in question on or before the day of Hilary Term now next ensuing And that the said parties shall and do perform fulfil and keep such award so to be made by him the said arbitrator as aforesaid And it is also ordered by and with such consent as aforesaid that the costs of the said cause to be taxed shall abide the event and determination of the said award and that the costs of the said reference shall be in the discretion of the said arbitrator who shall direct and award by whom and to whom and in what manner the same shall be paid And it is likewise ordered by and with such consent as aforesaid that the plaintiff and defendant respectively shall together with their respective witnesses be examined upon oath and that the said parties shall produce before the said arbitrator all books papers and writings touching and relating to the matters in difference between the said parties as the said arbitrator shall require And it is likewise ordered by and with such consent as aforesaid that neither the plaintiff nor the defendant shall prosecute or bring any action or suit in any court of law or equity against each other of and concerning the premises in question so as aforesaid referred And it is further ordered by and with such consent as aforesaid that if either party shall by affected delay or otherwise wilfully prevent the said arbitrator from making an award he shall pay such costs to the other as the Court of Queen's Bench shall think reasonable And lastly it is ordered by the like consent as aforesaid that either of

No. CXLIII. the said parties shall be at liberty to move the said Court of
Rule of Queen's Bench that this order may be made a rule of that
Reference at court.
Nisi Prius.

No. CXLIV.

No. CXLIV.

Submission a
Rule of Court.

Rule for making a Submission by Bond a Rule of Court.

A. B. v. C. D. In the Common Pleas
 Term &c.

Upon reading the affidavit of G. H. and another and the bond or obligation with the condition thereof thereunder written bearing date &c. duly executed by C. D. of T. Esquire to A. B. of P. Esquire the tenor and effect of which said bond and obligation is in the words and figures following (that is to say)

Know all men &c. [*set out the bond and condition verbatim*]
 It is ordered that the said bond and the condition thereof and the submission between the parties in the said condition mentioned be and the same is hereby entered and made a rule of this court pursuant to the statute in such case made and provided.

No. CXLV.

No. CXLV.

Order of
Reference.

Order to refer all Matters in Difference in the Cause.

Rolls.

Between { S. F. and others plaintiffs
 { J. H. defendant

On motion of plaintiff's counsel alleging plaintiff's bill and defendant's answer and cause being at issue witnesses had been examined on the part of the plaintiff and publication had passed in the cause and plaintiff and defendant had since agreed to refer all matters in dispute between them in the cause to the award of and therefore praying that the same may be referred to his award accordingly on which and on hearing defendant's counsel who consented thereto It is ordered That all matters in difference between plaintiff and defendant in the cause be referred to the award of &c. so as the award be made

in writing &c. And in case the said arbitrator shall not be prepared to make his award at the time aforesaid the parties from time to time to apply for and consent to such enlargement of the time as the said arbitrator shall certify and the court deem reasonable And also that the costs of the suit and reference and the award lie in the discretion of the said arbitrator and that the parties and all witnesses to be by them produced if required by the said arbitrator or either party be examined upon oath to be sworn before one of the London commissioners to administer oaths in Chancery and that plaintiff be at liberty to read before the arbitrator the depositions in the cause and defendant be at liberty to examine before the arbitrator the witnesses to such depositions and that all deeds books &c. be produced to the said arbitrator and that neither party prosecute any action or suit against the arbitrator or each other concerning the premises and if either party shall by affected delay &c. [see *Rule*] and that seven days' notice of any appointment to proceed on such reference to be given to each party and their solicitor be deemed good notice and that if either party being duly summoned neglect or refuse to attend arbitrator he be at liberty to proceed without such attendance and make his award *ex parte* And either party be at liberty to apply to the court to have said award made an order of the court. (See another Form, Russ. on Arbitration, pp. 736, 737, 2nd ed.)

No. CXLV.
*Order of
Reference.*

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No. CXLVI.

*Order that an Agreement be made an Order of the Court
of Chancery.*

No. CXLVI.
*Order of
Chancery.*

Whereas by Articles of Agreement bearing date &c. it is recited and agreed as follows [*setting forth the instrument verbatim*] Now upon motion of defendant's counsel and upon producing said agreement praying that the same may be made an order of court It is ordered that said agreement be made an order of court to be observed and performed by all parties thereto according to the tenor and true meaning thereof
Mr. of counsel for the plaintiff consenting thereto.

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No. CXLVII.

No. CXLVII.

*Order of
Chancery.**Order to make an Award an Order of the Court of Chancery.*

Upon motion &c. praying the writing of award hereafter mentioned bearing date the day of in the year of our Lord 18 under the respective hands and seals of A. B. and C. D. arbitrators &c. and by them sealed and delivered being first duly stamped in the presence of E. F. may be made an order of this court and the said writing of award being now produced the same appears to be in the words and to the tenor following (that is to say) To all to whom &c. [*set out the award verbatim*] whereupon and upon hearing &c. and an affidavit made by the said &c. his lordship doth order &c.



No. CXLVIII.

No. CXLVIII.

*Appointment of
Arbitrators.**Acceptance by the Arbitrators of the Appointment.*

We the undersigned A. B. and C. D. the referees within named and appointed do hereby accept of the appointment as arbitrators for the purposes therein expressed And for the proceeding in the investigation of the matters in dispute between the parties within mentioned we appoint and fix to meet at the house of in &c. by eleven o'clock in the forenoon Witness our hands this day of 18

Witness

A. B.

C. D.



No. CXLIX.

No. CXLIX.

*Appointment of
Umpire.**Appointment of a Third Arbitrator, or Umpire.*

Stamp.

Obs. The appointment of an umpire made in writing by the arbitrators requires no stamp, *Routledge v. Thornton*, 4 Taunt. 704.

We A. B. and C. D. the arbitrators within named by this memorandum in writing under our hands made before the entering upon the consideration of the matters referred do hereby nomi-

nate and appoint E. F. of &c. (a) to be the third arbitrator to act with us in the consideration and determination of the same according to the provisions of the within written rule [bond obligation or indenture] *As witness &c.*

No. CXLIX.
*Appointment of
Umpire.*

No. CL.

Another.

No. CL.

We the undersigned A. B. and C. D. arbitrators within named having considered of the matter in difference between the said parties and having heard what each of them had to offer and allege in his behalf but not having agreed in relation thereto so as to enable us to make an award between the said parties do hereby in pursuance of the power and direction given to us for that purpose by the within written instrument nominate and appoint E. F. of &c. to be umpire between the said parties in determining the matters in dispute as aforesaid provided he will accept such office *As witness &c.*

Witness

A. B.

C. D.

No. CLI.

Nomination of an Umpire by Arbitrators appointed.

No. CLI.

By Arbitrators.

To all to whom &c. Whereas by an order of the Lord High Chancellor bearing date the day of in a cause then depending in the High Court of Chancery where F. G. I. W. and K. L. were complainants and I. B. G. W. and R. N. were defendants it was then ordered by the Lord High Chancellor in Court as between the plaintiff F. G. and the defendants I. B. and G. W. that all matters in difference between the said parties in this cause should be referred to the award and determination of us (*arbitrators*) of &c. and that we should make our award therein on or before the first day of Trinity Term then next and in case we should not agree in opinion that we should name an umpire

(a) If the consent of the third person has not been obtained, add, "on condition that he do within days from the date hereof by some writing under his hand consent to act therein accordingly."

No. CLI.
By Arbitrators.

who should make an umpirage on or before the day of
Term then next *And whereas* we the said (*arbitrators*)
have taken the matters so referred to us into our consideration
but cannot agree in opinion concerning the same *Now know ye*
That in pursuance of the power and direction aforesaid in respect
to the naming of an umpire in the said matters we the said (*arbi-*
trators) do hereby nominate and appoint &c. *As witness* &c.



No. CLII.
Time for making
the Award.

No. CLII.

Enlargement of the Time for making an Award by the Parties
in Dispute.

Know all &c. That we the within named A. B. and C. D. for
ourselves respectively and for our respective heirs executors and
administrators have given and granted and by these presents do
give and grant unto the within named (*arbitrators*) until the
day of now next ensuing for making their award
of and concerning the several matters and things to them re-
ferred as within mentioned so that they may make their award
in writing &c. on or before the day of *As witness* &c.



No. CLIII.
Time for making
the Award.

No. CLIII.

Enlargement of the Time for making an Award by Arbitrators.

We the undersigned (*arbitrators*) by virtue of the powers
given to us for that purpose do hereby extend and enlarge the
time for making our award until the day of now next
ensuing on or before which said day our award in writing of or
concerning the matters in difference within mentioned shall be
made and published *As witness* &c.



AWARD.

- | | |
|--|---|
| <p>1. <i>Requisites of the Award.</i>
 <i>First, must be consistent with the Submission.</i>
 <i>Second, must be certain.</i>
 <i>Third, must be mutual.</i>
 <i>Fourth, must be final.</i>
 <i>Fifth, must be of a Thing possible and lawful.</i></p> | <p>2. <i>Amount of Stamp Duty.</i>
 <i>Deed Stamp.</i>
 <i>Ad valorem Stamp.</i>
 3. <i>What an Award within the Stamp Act.</i>
 4. <i>Effect of an Improper Stamp.</i>
 5. <i>Affidavit to support, &c., an Award.</i></p> |
|--|---|

SECT. 1. The general requisites of an award are, First, That the award must be consistent with the submission ; Secondly, That it must be certain ; Thirdly, That it must be mutually satisfactory ; Fourthly, That it must be final ; Fifthly, That it must be of a thing possible and lawful.

Requisites of the award.

First. *The award must be consistent with the submission.* If it be made of any other thing than what is contained in the submission, it is void ; as where the submission is of all differences at the time, an award as to differences subsequent to the submission is bad, Roll. Arbit. (C.) 8 S. O. ; *Barnardiston v. Fowler*, 10 Mod. 204 ; or an award that a lease should be granted from a certain time, which by the submission ought to have been awarded from a time prior, *Bonner v. Liddell*, 1 B. & B. 80 ; so under a submission of all matters in difference between A. and B., an award on matters in difference between A., B., C. and D. is bad, *Fisher v. Pimbley*, 11 East, 188 ; so an award of a sum of money to one of the parties, and another sum to a stranger, is good for the party himself, but void for the stranger, 2 Saund. 293.

Must be consistent with the submission.

Secondly. *The award must be certain.* Therefore where the award is to give security for the payment of a sum of money, it is bad, because uncertain what security, whether by bond or otherwise, *Thine v. Rigby*, Cro. Jac. 314 ; or an award of a bond for quiet enjoyment, without appointing a certain sum, is void, *Salmon's case*, 5 Co. 77 ; S. C. Cro. Eliz. 432. But the certainty required in an award is to a common intent, and the uncertainty must expressly appear on the face of the award, 1 Burr. 277.

Must be certain.

Thirdly. *The award must be mutually satisfactory.* It must not be on one side only ; what is awarded to be done to one, must be an advantage to both, namely, to give satisfaction to one and discharge the other ; therefore where A. and B. submit all actions by A. against B., and by B. against A., an award that A. shall go quit, and not B., is void, Roll. Abr. 253 ; therefore where a suit in Chancery, in which

Must be mutual.

<u>Award.</u>	some of the plaintiffs were infants, was referred by an order of that court, an award made in pursuance thereof was held bad, as there was nothing to bind the infants, and consequently no mutuality.
Must be final.	Fourthly. <i>The award must be final.</i> Therefore an award that if the plaintiff on account prove certain articles against the defendant, then he shall pay so much as the plaintiff was damnified thereby, is not final, <i>Selsby v. Russell</i> , Comb. 456; <i>Simmonds v. Swaine</i> , 1 Taunt. 554; <i>Baillie v. Edinburgh, Oil Gas Co.</i> , 3 Cl. & Fin. 639. But an award of a thing to be done at a future day, if such thing must be absolutely done, is good, Palm. 110.
Amount of stamp duty.	Fifthly. <i>The award must be of a thing possible and lawful</i> , as an award of a payment at a day past is bad, because impossible, 1 Inst. 206; or an award that one shall steal and the like, Ib.
	2. The stamp duty required on an award is 1 <i>l.</i> 15 <i>s.</i> ; and where the same together with any schedule or other matter put or indorsed thereon, or annexed thereto, contains 2160 words, then for every entire quantity of 1080 words over and above the first 1080, a further progressive duty of 2 <i>s.</i> 6 <i>d.</i> But where an opinion is given on a case, it has been held that, supposing a stamp on the opinion was necessary, the case formed no part of it, although the opinion was annexed to the case, and therefore need not be reckoned in computing the number of words, <i>Boyd v. Emmerson</i> , 2 Ad. & Ell. 184; <i>S. C.</i> 4 Nev. & Man. 99; <i>Sybray v. White</i> , 1 M. & W. 435.
Deed stamp.	An award in writing, under seal, need not have a deed stamp, unless delivered as a deed, but if delivered as an award, an award stamp held sufficient, <i>Brown v. Vawser</i> , 4 East, 584; <i>Blundell v. Brettargh</i> , 17 Ves. 236. This distinction is, however, rendered immaterial by the 55 Geo. 3, c. 184, which makes an award in all cases subject to a deed stamp. An award by commissioners under an inclosure act need not have an <i>ad valorem</i> stamp upon the money consideration, <i>Doe v. Preston</i> , 7 B. & C. 392.
<i>Ad valorem</i> stamp.	
What an award within the Stamp Acts.	3. As a rule where a document on the face of it does not appear to be an award, it need not be stamped as such, therefore where a defendant had stated that if a miner's jury should say that the shaft was his, he would remunerate the plaintiff, held, that the verdict of the jury given in writing, and stating that the shaft was in defendant's possession, was not an award, and did not require an award stamp, <i>Sybray v. White</i> , 1 M. & W. 435; <i>S. C.</i> 2 Gale, 68; so it seems that an opinion given by counsel, to whom a case was referred for his opinion, was held not to be an award within the provisions of the Stamp Act, <i>Boyd v. Emmerson, ubi sup.</i>
Effect of an improper stamp.	4. If an award be made on an improper stamp, and no application be made to enforce it, the court will not set it aside, <i>Preston v. Easton</i> , 7 T. R. 95; see further as to setting aside awards, 2 Bacon, Abr. tit. Arbit. and Award; Watson on Awards, 3rd ed. Chap. ix.

An award, if not stamped when made, may, according to the present practice, be stamped afterwards without penalty, if taken to the office for that purpose, within six or eight weeks after it has been executed. It may be stamped at any time on paying the penalty. When it is sought to draw up a rule for an attachment for non-performance of an award, it is competent to the officer of the court to object to the absence of a stamp on the award, and on that account refuse to draw up the rule, *Hill v. Slocombe*, 9 Dowl. 339; Russ. on Arbitration, pp. 249, 250, 2nd ed.

Award.

5. An affidavit to support or set aside an award formerly required a stamp, *Templeman and Reed*, 9 Dowl. 962. The 4 & 5 Vict. c. 34, s. 1, provides, that no stamp shall be necessary on any "affidavits whatsoever, whether to be read, filed or used in the courts of law or equity, or before judges, commissioners, or officers, in any action or suit, or otherwise howsoever."

Affidavit to support, &c. an award.

No. CLIV.

Award pursuant to a Clause in Articles of Agreement for making Repairs.

No. CLIV.
Award under an Agreement.

To all to whom these Presents shall come We the (arbitrators) send greeting *Whereas* by certain articles of agreement bearing date &c. and made between A. B. of &c. gentleman of the one part and C. D. of &c. builder of the other part he the said C. D. in consideration of the sum of £ to be paid to him as hereinafter is mentioned did covenant with the said A. B. that he the said C. D. at his own proper expense would on or before the day of in a complete and workmanlike manner and with good and substantial materials of all sorts make the several alterations reparations and improvements to a messuage situate &c. and in such manner as therein is more particularly mentioned and set forth in consideration whereof the said A. B. did covenant with the said C. D. that he should and would pay unto the said C. D. the sum of £ in manner following (that is to say) the sum of £ part thereof on the day of then next ensuing and the sum of £ residue thereof within fourteen days next after the said messuage should be completely repaired and improved in manner as therein before mentioned And it was thereby mutually agreed that if any dispute should arise between the said parties relating to the performance of the said articles that then the same should be left to the decision of two indifferent

Recital of an agreement by a builder to make repairs.

To refer disputes to arbitration.

No. CLIV. persons as arbitrators the one to be named by the said A. B. and the other by the said C. D. or to an umpire to be chosen by the said (*arbitrators*) *And whereas* the said C. D. hath at his charge made such alterations reparations and improvements to the said méssuage pursuant to his covenant contained in the said articles and hath received of the said A. B. the sum of £ being the first payment mentioned in the said articles

Award under an Agreement. Performance of the contract by the builder. Disputes between the parties. *And whereas* some disputes have since arisen touching the reparations made as aforesaid and the same have been referred to us the said (*arbitrators*) *Now know ye* That we the said (*arbitrators*) having fully viewed and inspected the several alterations reparations and improvements done in and to the said messuage by the said C. D. do hereby award that the sum of £ shall be deducted from the said sum of £ so remaining to be paid to the said C. D. as aforesaid *And* we the said (*arbitrators*) do hereby declare award and determine that there is now justly due and ought to be paid to the said C. D. exclusive of the said sum of £ so paid to him and of the said sum of £ hereby agreed by us the said (*arbitrators*) to be deducted as aforesaid the full sum of £ of lawful &c. which said sum of £ we do hereby order and award shall be paid by the said A. B. to the said C. D. on the day of next at the house known &c. and at the hour of in the forenoon of the same day *And* we do hereby further award that the sum of £ being the expense and charges incident to the arbitration shall be paid by the said A. B. and C. D. in equal moieties *And lastly* upon payment of the said sum of £ we do hereby award and direct that the said parties shall duly execute and deliver to each other mutual releases in writing of all and every matter heretofore in difference between them and so referred to us as aforesaid if and when either party shall require the same and that the expenses of such release shall be paid by the party requiring the same *In witness &c.*

Award. Parties to execute mutual releases. *Received* the day of 18 of the sum of £ being the amount by the annexed award directed to be paid to me and which I hereby acknowledge to have received in addition to £ heretofore received on account of my bill delivered to the said A. B. in full discharge and satisfaction of all claims and demands whatsoever which I have or ever had against the said A. B.

C. D.

£

No. CLV.

Award under a Submission by Deed.

To all to whom these Presents shall come (Arbitrator) of &c. sendeth greeting *Whereas* by a certain deed bearing date &c. and made between (*debtor*) of &c. of the first part and (*trustees*) trustees on behalf of themselves and the other creditors of the said (*debtor*) of the second part and the several persons whose names are thereunto subscribed and seals affixed being creditors of the said (*debtor*) of the third part and A. B. of &c. of the fourth part after reciting among other things That the said A. B. claimed that the said partnership concern of N. O. and O. P. was indebted to him in the sum of £ or some other sum or sums of money secured to him by the bond of the said N. O. and O. P. some or one of them or by some other security or securities but it was contended on the part of the said (*T.*) and other the creditors of the said (*D.*) that he the said A. B. was not entitled to recover any part of the said debt or sum of the said partnership concern until all the creditors of the said concern were paid off and satisfied their full and whole debts of twenty shillings in the pound inasmuch as it appeared to them that the said A. B. at the time such security or securities were so given as aforesaid was a partner in the said concern of N. O. and O. P. and still remained a partner therein so far as respected the creditors of the said concern It was covenanted declared and agreed by and between all and every the said parties thereto that in order to settle such differences and disputes and particularly the said A. B. for himself his executors and administrators did covenant and agree to and with the said (*T.*) as trustees as aforesaid that the said matter in difference between them should be left to the award &c. of &c. who should award and determine whether the said A. B. was not a partner in the said concern of N. O. and O. P. at the time &c. and whether he did or did not still remain &c. *And* in case it should be awarded that the said A. B. is entitled so to recover on such security or securities then he should be entitled to receive the benefit and provisions of the deed now in recital equally with the other creditors of the said (*D.*) but in case it should be awarded that he was a partner in the said concern of N. O. and O. P. at the time of taking such security &c. Then he the said A. B. his heirs executors and administrators should and would whenever thereunto required

No. CLV.

*Award under a
Submission by
Deed.*

No. CLV.

*Award under a
Submission by
Deed.*

by the trustees before named grant convey assign and assure by such conveyances and assignments or other assurances as they should require unto them the said (T.) their heirs executors administrators and assigns all his interest in the partnership estate stock and effects and in all other the hereditaments and premises hereby covenanted to be assigned and conveyed to be held by them upon the trusts hereinbefore declared to and for the benefit of all other the creditors of the said (D.) *And* moreover that all and every the parties hereto should and would stand to &c. the award &c. so as the same &c. *Now know ye* &c. I the said (A.) having &c. do award &c. that the said A. B. was not a partner in the said concern of N. O. and O. P. at the time the said security or securities or any of them were given to him by them as aforesaid and that he the said A. B. is entitled in law to recover on the said security or securities before all the other creditors of the said concern shall have been paid their full and whole debts of &c. in the pound *In witness* &c.



No. CLVI.

No. CLVI.

*Award under
Cross Bonds.*

Award of Two Arbitrators under a Submission by Cross Bonds.

Recital of arbitration bonds.

To all to whom these Presents shall come We (one Arbitrator) of &c. and (other Arbitrator) of &c. send greeting *Whereas* by two several bonds or obligations in writing under the respective hands and seals of A. B. of &c. and C. D. of &c. bearing date respectively on or about the day of last past the said A. B. became bound to the said C. D. and the said C. D. to the said A. B. in the penal sum of £ with conditions thereunder written to stand to abide fulfil and keep the award and final determination of us the said (A.) indifferently chosen to arbitrate award and determine of and concerning all matters referred to us so as the award of us the said (A.) was made and set down in writing under our hands and seals ready to be delivered on or before the day of next ensuing as by reference to the said bonds or obligations will more fully appear *And* it was agreed by the said parties that the submission should be made a rule of her Majesty's Court of Queen's Bench which was afterwards accordingly done *And also* that the costs and charges of the said bonds and obligations and all costs and charges of and

attending the said arbitration and award should be in the discretion and subject to the award of us the said (A.) (a) *Now know ye* That we the said (A.) having taken upon ourselves the charge and business of the said award and having heard the allegations and proofs of both the said parties and their respective witnesses concerning the several matters referred to us and also upon our view and inspection of the said farm lately occupied by the said A. B. upon due deliberation do find and award in manner following (that is to say) *First* we find and award That the said A. B. hath not performed and fulfilled the several covenants contained in his lease of the said farm for laying a certain quantity of lime thereupon for scouring and ditching and for repairing the hedges fences and gates and respecting the ploughing and course of husbandry thereof *And we further* find and award That the said A. B. hath ploughed a certain field of acres part of the said farm and hath sown acres thereof with wheat contrary to the covenants contained in his said lease the whole crop of which has been reaped by the said C. D. *And we the said (A.)* do further award That the said C. D. shall have and take to his own use the whole of the said crop grown in the said field of acres and that the said A. B. shall be entitled to receive from the said C. D. the value of the said acres of wheat in the said field at the rate of £ per acre exclusive of tithe rent charge *And we the said (A.)* do hereby further award determine and adjudge That the said A. B. his executors or administrators shall on or before the day of instant pay or cause to be paid unto the said C. D. his executors or administrators at the house of &c. the sum £ in satisfaction for the damages done to the said farm of the said A. B. by his breach of the covenants contained in his said lease *And we further* award and order That the said A. B. shall well and truly pay the costs charges and expenses incident to and incurred by this arbitration and award (except the charges and expenses of I. F.) *And we further* hereby award That the said C. D. shall and do on the said day of instant at the time and place aforesaid pay unto the said A. B. the sum of £ per acre for acres of wheat part of the said close of acres and that the said C. D. shall pay the tithe rent charge due in respect thereof *In witness &c.*

No. CLVI.
Award under
Cross Bonds.

Award.

(a) If the time has been enlarged by consent of parties, say, "*And whereas* by a writing under the hands of the said A. B. and C. D. bearing date &c. the time in the in part recited bond limited for our making our award was enlarged until the day of next ensuing."

No. CLVII.

No. CLVII.

*Another under
Cross Bonds.**Another Award under a Submission by Cross Bonds, between a
Surveyor and a Company.*Recital of
bonds.

Conditions.

Stipulations.

Award.

To all to whom these Presents shall come I (Arbitrator) of &c.
 send greeting *Whereas* in and by several bonds or obligations in
 writing bearing date respectively on or about &c. the Company
 of G. and (Surveyor) of &c. became bound to each other in the
 penal sum of £ with conditions thereunder written That if the
 said Company and their successors and the said (S.) his heirs
 executors and administrators did and should for and on their
 respective parts and behalves in all things well and truly stand
 to abide by obey perform fulfil and keep the award order arbi-
 trament final end and determination of me the said (A.) of and
 concerning all and all manner of actions causes of actions suits
 &c. [see *Arbitration Bond*] and demands whatsoever both at law
 and in equity at any time theretofore had made moved done paid
 sustained commenced prosecuted or depending by and between
 the respective parties so as the said award should be made in
 writing &c. [see *the two last precedents*] *And* it was thereby
 agreed that the costs &c. *And also* That the money to be
 awarded to the said (S.) if any should be awarded to be paid
 to him or his order within ten days after the then next quarterly
 court of directors from the publication of the said award and that
 it should be lawful for the said (A.) in making his said award to
 direct and appoint general releases to be made and executed by and
 between the said parties respectively or mutually to be exchanged
 between them as the nature of their respective cases should re-
 quire and in his judgment be deemed expedient *And also* to
 direct and award by whom the expense of such general release
 or releases should be paid and discharged *Now know ye and
 these Presents witness* That I the said (A.) having taken upon
 myself the said reference and having been attended by the said
 parties or their solicitors or agents and having examined their
 witnesses heard their respective allegations and investigated the
 accounts and transactions by and between the said parties and
 maturely considered the same do make my award in manner fol-
 lowing (that is to say) *I award and determine* That there is now
 justly due and owing to the said (S.) from the said Company of
 G. the sum of £ *And* I do award order and direct That
 the said sum of £ be paid to the said (S.) or order within

ten days after the next quarterly court of directors which shall be held after the publication of this my award And I do further order and direct That each of the said parties shall pay their own costs charges and expenses of the said bonds of arbitration and their witnesses and all matters whatsoever attending and incidental to the said reference and that the costs and charges attending this my award shall be paid equally between them And lastly I do award and direct that general releases be made &c. [see *first precedent, ante*, p. 334] In witness &c.

No. CLVII.
*Another under
Cross Bonds.*

—◆—

No. CLVIII.

Award of Differences between two Copartners under a Submission by a Judge's Order.

No. CLVIII.
*Award under a
Judge's Order.*

To all to whom these Presents shall come I (Arbitrator) of &c. send greeting Whereas at a sitting of *Nisi Prius* after term last holden at the Guildhall in and for the city of London and county of the same (a) on Wednesday the day of and by adjournment on the day of the same in the year of our Lord 18 before the Right Honorable Lord Chief Justice of the Common Pleas It was ordered by the said court in an action then and there depending between A. B. plaintiff and C. D. defendant by and with the consent of all parties their counsel and attorneys that a juror should be withdrawn and all matters in difference between the said parties should be referred to the award arbitrament final end and determination of me the said (A.) so as I should make and publish my award in writing under my hand of and concerning the premises in question on or before the day of then next ensuing And that the said parties should perform fulfil and keep such award so to be made by me the said (A.) as aforesaid And that the costs of the cause should abide the event of the said award And that the costs of the present reference should be in the discretion of me the said (A.) who should direct and award by whom to whom and in what manner the same should be paid as by the said order reference being thereto had will more fully appear And whereas the time for making and publishing the said arbitrator's award

Recital of
order.

(a) Or, "at *Westminster* in and for the county of *Middlesex*."

No. CLVIII. in pursuance of the said recited order hath by several rules of the said Court of Common Pleas made from time to time by and with the consent of the said parties been and the same now stands enlarged until the day of this present term *Now know ye* That I the said (A.) having taken upon myself the charge and burthen of the said reference and having inspected the copartnership books of account and having examined and duly considered the allegations vouchers proofs and witnesses of the said parties respectively do make and publish this my award of and concerning the premises (that is to say) *I do* award order and direct That all proceedings in the said cause shall cease and be no further prosecuted *And* that the said C. D. shall pay &c. [*as before, Award under Submission by Deed*] which said sum of £ I do adjudge and declare to be justly due from the said C. D. to the said A. B. for or upon the matters contained in the declarations in the said cause Subject nevertheless to this proviso That if on or before the said day of the said C. D. shall pay or discharge all or any part of the balances due to the creditors of the said firm of A. B. and C. D. then upon delivering to the said A. B. at the time and place aforesaid proper receipts and discharges for so much as he shall have so paid the same shall be taken and deemed as payment of so much of the said sum of £ as by the said receipts and discharges shall be expressed to have been received or otherwise that he the said C. D. shall pay the whole of the said sum of £ to the said A. B. who thereout shall pay and satisfy such balances to the several persons as aforesaid *And* I do further award order and direct That the said C. D. do and shall permit the said A. B. to collect and receive for their joint use the several debts and sums of money as follow (that is to say) [*here state the names of the several debtors to the firm and the amount of their debts*] *And* I do further award and direct That the said A. B. shall be at liberty to bring any action or actions either in his own name or in their joint names for the recovering of any debt or debts sum or sums of money hereinbefore mentioned But nevertheless if the said A. B. should bring any actions in the name of the said C. D. without his consent first had and obtained that then the said A. B. shall save harmless and indemnify the said C. D. from all consequences charges and expenses attending any such action if the same should happen to fail and be fruitless *And* I do further award order and direct That the said A. B. shall not compound or compromise any action to be brought for the recovery of the said debts or

No. CLVIII.
*Award under a
Judge's Order.*

Time of
making award
enlarged.

Award.

C. D. to pay
A. B. a certain
sum.

A. B. to collect
in the debts,
&c.

sums of money without the consent of the said C. D. in writing for that purpose first had and obtained *And* that the said A. B. shall within days after the payment of the said sum of £ so awarded at his own expense enter into and deliver a bond to the said C. D. in the penalty of £ with a condition thereunder written for making the same void in case he the said A. B. shall give to the said C. D. an account of his proceedings in the collecting of the said outstanding debts from time to time within six weeks after any request in writing so to do *And* shall also from time to time as the same debts are respectively received pay to the said C. D. one moiety thereof all reasonable expenses attending the collecting and receiving the same being first deducted *And lastly* I do hereby award order and direct That each of the said parties shall and do bear and pay his own costs of this reference *And* that the costs of this our award be paid in equal moieties between them (a) *In witness &c.*

No. CLVIII.
*Award under a
Judge's Order.*

To give a bond
to C. D. that
he will account.

No. CLIX.

Award under a Submission by Order of the Lord Chancellor.

No. CLIX.
*Under Lord
Chancellor's
Order.*

To all &c. [see last precedent] *Whereas* by a certain order made by the Lord High Chancellor of Great Britain on the day of in the year of &c. in a certain cause depending in the High Court of Chancery wherein A. B. of &c. was plaintiff and C. D. of &c. defendant It was ordered by consent of the parties and their counsel &c. among other things that the settlement of the accounts and all other matters in difference between the said parties should be referred to me the said (*Arbitrator*) *Now* *know ye* That I the said (A.) having taken upon myself [see last precedent] do hereby award adjudge and declare the balance due from the said C. D. to the said A. B. upon such settlement to be the sum of £ which said sum I do award order and direct that the said C. D. do and shall pay unto the said A. B. at &c. *And* I do further award order adjudge and determine that the said A. B. shall within days after the payment of the said sum of £ at the costs and expense of the said C. D. execute

Recital of Lord
Chancellor's
order.

Award.

C. D. to pay
balance due to
A. B.

A. B. to exe-
cute convey-
ance.

(a) Where it is ordered by the rule of court, that the costs of the cause shall abide the event of the award, the arbitrator has no occasion to take notice of any costs but the costs of reference.

No. CLIX.
Under Lord
Chancellor's
Order.

Costs to be
borne equally
by the parties.

such a good and effectual conveyance and assurance of the mes-
suage or tenement in the occupation of the said A. B. situate &c.
to and for the use of the said C. D. or as he shall direct and that
he the said C. D. shall upon the execution of the said conveyance
pay unto the said A. B. the sum of £ as a consideration
for the same *And lastly* I do award &c. That the costs charges
and expenses of the suit and reference and also of this my award
which I do adjudge to amount in the whole to the sum of £
shall be borne and paid by the said parties in difference in equal
moieties and proportions *In witness* &c.



No. CLX.

No. CLX.
Award by an
Umpire.

Award by an Umpire.

Recital of cross
bonds to abide
an award of
arbitrators.

Or of umpire.

Appointment
of umpire.

To all to whom these Presents shall come I (umpire) of &c.
send greeting *Whereas* A. B. of &c. and C. D. of &c. copartners
have mutually entered into and reciprocally executed bonds or
obligations to each other bearing date &c. in the penal sum of
£ conditioned that the said parties should in all things
well and truly stand to abide by observe perform fulfil and keep
the award order final end and determination of (arbitrators) arbi-
trators indifferently chosen by the said parties of and concerning
all and all manner of action and actions cause and causes of
action suits bills bonds specialties [covenants contracts promises
accounts reckonings sums of money judgments executions extents
quarrels controversies trespasses] damages and demands what-
soever both in law and equity committed or depending by or
between the said parties so as the said award should be made on
or before the day of *But* if the said arbitrators
should not make such their award of and concerning the said
differences by the time aforesaid then if the said parties should
in all things well and truly stand to abide by observe perform
fulfil and keep the award order arbitrament umpirage final end
and determination of such person as should thereafter be chosen
by the said arbitrators so as the said umpire should make his
award or umpirage of and concerning the same on or before
the day of *And whereas* the said (A.) met upon the
said arbitration and did not make their award by the time
limited in and by the conditions of the said bonds and in pur-

suance thereof have chosen and appointed me as umpire to settle and determine the matters in difference between the said parties *Now know ye* That I the said (*umpire*) the umpire named and chosen as aforesaid having taken upon me the burthen of the said arbitration and having heard &c. of and concerning the said disputes and differences between them and fully considered the same do make this my award and umpirage in manner following (that is to say) I do award and order that the said A. B. his executors or administrators do and shall on the day of between the hours of &c. pay or cause to be paid unto the said C. D. the sum of £ in full for his damages and costs in a certain action lately commenced by him the said A. B. against the said C. D. and also for the costs of and occasioned by this reference *And* upon payment of the said sum of £ I do award &c. [*mutual releases*] *In witness &c.* (See Forms of Awards, Russ. on Arbitration, pp. 764—805, 2nd ed.)

No. CLX.

*Award by an
Umpire.*

Award.

A. B. to pay
costs of a suit
commenced by
him ;And costs of
reference.

Arbitration Clause in Deeds, see INDEX TO PRECEDENTS.

ARTICLES.

Articles of Clerkship, see *ante*, APPRENTICESHIP.

Articles of Copartnership, see *post*, COPARTNERSHIP.

Articles for a Marriage Settlement, see *ante*, AGREEMENTS.

ASSIGNMENTS.

- | | |
|---|---|
| 1. <i>Definition of an Assignment.</i> | 6. <i>What assignable by Statute.</i> |
| 2. <i>Leases, Annuities, &c. assignable.</i> | 7. <i>Registration of Assignments of Personal Chattels.</i> |
| 3. <i>Equitable Assignments.</i> | 8. <i>How made.</i> |
| 4. <i>Notice of an Assignment of a Chose in Action.</i> | 9. <i>Stump.</i> |
| 5. <i>Offices of Trust not assignable.</i> | |

Definition of an assignment.

SECT. 1. An assignment is the transferring or setting over to another the interest a man hath in a thing (more particularly the transferring to another that particular interest which a man hath in any property wherein a third person not a party to the assignment has some right or interest). An assignment is properly the transfer of one's whole interest in any estate; but it is now generally appropriated to the transfer of chattels, either real or personal, or of *equitable interests*, Watkins' Princ. Conv., tit. Assignment.

Leases, annuities, &c. assignable.

2. Assignments are usually made of leases and estates for years. There may also be an assignment of an annuity or rent-charge, and of personal chattels, but judgments, statutes, and *choses in action*, as debts, bonds, &c., are not assignable by the common law, 10 Co. 48; Roll. Abr. 376, so as to vest in the assignee a right of action upon it in his own name, *Graham v. Gracie*, 13 Q. B. 548; *Thompson v. Bell*, 3 Ell. & Bl. 236. But courts of law will allow the assignee to sue in the name of the assignor, *Winch v. Keeley*, 1 T. R. 619; *Price v. Seaman*, 4 B. & C. 528. They may likewise be assigned in equity. So likewise, although by the common law no possibility or contingent interest could be assigned over to another, yet they are assignable in equity for a valuable consideration, *Wright v. Wright*, 1 Ves. 409; *Ashley v. Ashley*, 3 Sim. 159; but see 8 & 9 Viet. c. 166, s. 6.

Equitable assignments.

3. An assignment of a debt or other *chose in action* is usually made by deed, but in equity no particular form is necessary as conclusive evidence of the contract, and the payment of the consideration is sufficient, *Morgan v. Halford*, 17 Jur. 223; *Evans v. Protheroe*, 3 De G., Mac. & G. 572. A draft drawn by A. on B., in favour of C., for a valuable consideration, amounts to a valid assignment of so much of the funds of A. in the hands of B., *Rowe v. Dawson*, 1 Ves. 332; *Crawfoot v. Gurney*, 9 Bing. R. 372; *Smith v. Everett*, 4 Bro. Ch. R. 64. So indorsing and delivering a bond to an assignee for a valuable consideration amounts to an assignment of the bond, *Rowe v. Dawson*, 1 Ves. 332; *Royall v. Rowe*, 1 Ves. 348, 375; *Townshend v. Windham*, 2 Ves. 6; *Ex parte Alderson*, 1 Madd. R. 53. Indeed any order, writing or act which makes an appropriation of a fund, amounts to an equitable

assignment of that fund. The reason is, that the fund not being matter assignable at law, nor capable of manual possession, an appropriation of it is all that the nature of the case admits of, and therefore it is held good in equity. An assignment of a debt may be by parol as well as by deed, *Heath v. Hall*, 4 Taunt. R. 326, 327, 328; S. C. 2 Rose R. 271; *Tibbetts v. George*, 5 Ad. & Ell. 107, 115, 116.

An agreement between a debtor and a creditor that the debt owing shall be paid out of the specific fund coming to the debtor, or an order given by a debtor to his creditor upon a person owing money or holding funds belonging to the giver of the order, directing such person to pay such fund to the creditor, will operate as an equitable assignment of such debt or fund, *Rodick v. Gandell*, 1 De G., Mac. & G. 763.

The title of an assignee for value of an equitable interest is not affected by a previous insolvency of the assignor, the assignee having no notice of that insolvency, *In re Atkinson*, 2 De G., Mac. & G. 140; 16 Jur. 1003.

A deed poll, in the form of a power of attorney, was held in equity to amount to an assignment or to a covenant to assign, *Bennett v. Cooper*, 9 Beav. 252.

Where a debt not legally assignable has been equitably assigned for value, and the debtor has had notice of the assignment, all payments which he may thereafter make to the purchaser on account of the debt are well made, so far as the debtor is concerned, although the purchaser may have sold the debt, provided the debtor has no notice of the sale; nor is it absolutely necessary for him, on making such payment, to require production of the original assignment, *Stocks v. Dobson*, 4 De G., Mac. & G. 11; 17 Jur. 539; 22 L. J., Chanc. 884. See *Morrell v. Wootton*, 16 Beav. 197; *Jones v. Farrell*, 1 De G. & J. 208.

Assignees of a chose in action are liable to all the equities which attach to the thing assigned as against the assignor, *Smith v. Parker*, 16 Beav. 115. A retiring partner received security from the continuing partners for his share, and which he assigned to third parties. It was held, that the assignees took, subject to the right of equitable set-off of the continuing against the retiring partner; it was also held, that the assignees having assented to a substituted security in 1846, in lieu of a prior one in 1845, were subject to all the equities existing at the date of the second security, *Ib.*

A voluntary assignment by deed of the assignor's interest in a sum of stock standing in the names of trustees upon trust for him, is a complete transfer of such interest as between the donee and the representative of the donor, although no notice of the deed was given to the trustees in the donor's lifetime, because no further act on the part

Assignments.

Notice of an assignment of a chose in action.

of the donor was requisite to complete the gift. In such a case the donee could compel the trustees to transfer the stock to him, without making the donor, or his representative, parties to the suit. If, however, the trustees, before notice of the deed, transferred the stock to another person, the donor would have no remedy against them, *Donaldson v. Donaldson*, 1 Kay, 711; 23 L. J., Chanc. 788.

4. Notice of an assignment by a party having a beneficial interest in stock or other funds, invested in the names of trustees or executors, ought to be given by the assignee to the trustees or executors, otherwise a subsequent assignee, by giving such notice, will be preferred to the first, *Dearle v. Hall*, 3 Russ. 1; *Hulton v. Sandys*, 1 Yo. 622. See Williams on Personal Prop., pp 329, 331, 3rd ed. A person taking an assignment of a chose in action should inquire of the trustee, or other legal holder of the fund, whether he has previously received notice of any assignment, charge or lien upon the fund. A person who has received such notice cannot disregard it without making himself liable to the assignee, *Roberts v. Lloyd*, 2 Beav. 276; *Andrews v. Boussfield*, 10 Beav. 50; *Williams v. Thorp*, 2 Sim. 257. A trustee making a false representation in writing to an intended assignee, will be personally liable for any loss which may be sustained in consequence, *Lyde v. Barnard*, 1 M. & W. 102; *Swan v. Phillips*, 3 Nev. & P. 447.

On the assignment of a debt notice of it should be given to the debtor, otherwise he may safely pay the money to the person who had ceased, without his knowledge, to be his creditor, and he would not be liable to pay again, *Jones v. Gibbons*, 9 Ves. 410. A release was given by a creditor to his debtor, in respect of a judgment debt, before notice was given to the debtor of a previous assignment by the creditor, and such release was held to be good as against the assignee, *Stocks v. Dobson*, 22 L. J., Ch. 884.

Unless notice of an assignment of a chose in action be given, the assignee, in the event of the bankruptcy or insolvency of the assignor, may be deprived of the benefit of the assignment, on the ground that the chose in action remained in the order and disposition of the assignor, 12 & 13 Vict. c. 106, s. 125. See Shelford on Bankruptcy, pp. 194—203, 2nd ed.; 1 & 2 Vict. c. 110, s. 57; 7 & 8 Vict. c. 96, s. 17.

If the chose in action assigned be a fund in the Court of Chancery, an order must be obtained that it shall not be transferred without notice to the assignee, and the order must be left at the Accountant-General's office, *Greening v. Beckford*, 5 Sim. 195. See *Ex parte Kent*, 1 Hall & T. 214; *Swayne v. Swayne*, 4 Beav. 463; *Etty v. Bridges*, 2 Y. & C. C. C. 486.

Offices of trust, &c. not assignable.

5. An office of trust cannot be assigned, Dy. 7. See 5 & 6 Edw. 6, c. 16; 49 Geo. 3, c. 126; nor a personal trust, as that of guardian

or trustee, *Vaugh.* 180; nor the full pay of an officer, *Flurty v. Odum*, 3 T. R. 681; *Barnick v. Read*, 1 H. Bl. 627. So likewise the assignment of the half-pay of an officer is bad in equity as well as at law, *Stone v. Littledale*, 2 Aust. 533. An officer in the army cannot pledge or mortgage his commission, *Collyer v. Fullon*, 1 Turn. & R. 459.

A pension for *past* services may be assigned, *Davis v. Duke of Marlborough*, 1 Swanst. 79; but where it is granted solely or partially in consideration of the grantee's holding himself in readiness to serve the state when called upon it is not assignable, *Wells v. Foster*, 5 Jnr. 464.

6. Some things, not assignable in their nature, are made so by statute; as promissory notes, by 3 & 4 Anne, c. 9; bail bonds by sheriffs, 4 & 5 Anne, c. 16; certificates for taking and prosecuting felons to conviction, 10 & 11 Will. 3, c. 23; but see 7 Geo. 4, c. 64. The assignment of wages, half-pay, allowances and pensions by petty officers and seamen in the Royal Navy, is void by 11 Geo. 4 & 1 Will. 4, c. 20, s. 47; see 2 & 3 Vict. c. 51.

What assignable by statute, or otherwise.

7. Such assignments of personal chattels as come within the act 17 & 18 Vict. c. 36, are void, as against certain parties therein named, unless the same or a copy thereof be filed within twenty-one days with the proper officer of the Court of Queen's Bench. See *post*, tit. **BILLS OF SALE**; *ante*, **AFFIDAVITS**, Nos. XXIV., XXV., pp. 50, 51.

Registration of assignments of personal chattels.

8. Since the Statute of Frauds, it is requisite to the validity of an assignment of an estate in land that it should be in writing.

How made.

9. By the 13 & 14 Vict. c. 97, the *ad valorem* duty is chargeable on assignments as on any other conveyance; but where the assignment is not otherwise charged, or is not exempt from all duty, then the duty of 1*l.* 15*s.*, and the further progressive duty of 10*s.* is charged.

Stamp.

No. CLXI.

Assignment of an Agreement for the Purchase of an Estate.

No. CLXI.

Agreement.

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* by articles of agreement bearing date the day of last past and expressed to be made between (*vendor*) of &c. of the one part and the said (*assignor*) of the other part It is witnessed That the said (*V.*) did for the considerations therein mentioned agree to sell unto the said (*assignor*) all those messuages &c. *Now this Indenture witnesseth* That in consideration of the sum of £ to the said (*assignor*) well and truly paid by the said

Recital of articles.

Testatum.

No. CLXI. <u>Agreement.</u>	(<i>assignee</i>) the receipt of which is hereby acknowledged He the said (<i>assignor</i>) Doth assign <i>All those</i> the said recited articles of agreement and all the estate right title benefit advantage property claim and demand whatsoever of him the said (<i>assignor</i>)
Habendum.	of in or to the same <i>To have and to hold</i> the said articles and all benefit and advantage thereof in as full ample and beneficial a manner as he the said (<i>assignor</i>) could or might have been entitled to the same if these presents had not been made
Power of attorney.	<i>And</i> the said (<i>assignor</i>) doth hereby make nominate and constitute the said (<i>assignee</i>) his executors administrators and assigns his true and lawful attorney and attornies irrevocable in his name but for the sole use and benefit of him the said (<i>assignee</i>) to do perform and execute every act matter and thing whatsoever requisite and necessary for carrying the said articles of agreement into full effect <i>Provided nevertheless</i> and it is hereby declared and agreed by and between the said parties hereto that the said (<i>assignee</i>) shall and will at all times indemnify and save harmless the said (<i>assignor</i>) his heirs executors and administrators from and against all costs charges and damages which he they or any of them shall or may pay sustain or be put unto by reason of any action or suit in pursuance of the power hereinbefore given
Indemnity to assignor.	<i>And</i> the said (<i>assignor</i>) for himself his heirs executors and administrators doth hereby covenant with the said (<i>assignee</i>) in manner following (that is to say) That for and notwithstanding any matter or thing by him done omitted or knowingly suffered the said in part recited agreement is a good and valid agreement and not in anywise forfeited surrendered or otherwise made void
Agreement valid.	<i>And</i> that he the said (<i>assignor</i>) hath full power and lawful authority to assign and assure the same <i>And also</i> that he the said (<i>assignor</i>) his heirs executors and administrators shall and will at any time hereafter upon the reasonable request and at the costs and charges of the said (<i>assignee</i>) do and perform all such further and other acts for the better and more fully and satisfactorily assigning and assuring the said agreement as by the said (<i>assignee</i>) his heirs &c. or by his or their counsel in the law shall be advised and required
Further assurance.	<i>And</i> the said (<i>assignee</i>) for himself his heirs executors and administrators doth hereby covenant with the said (<i>assignor</i>) his heirs &c. That he the said (<i>assignee</i>) shall and will well and truly pay perform and observe all and every the sum or sums of money covenants agreements provisoes and conditions respectively which are mentioned or contained in the said in part
Assignee to perform covenants of the agreement.	

recited articles which on the part of the said (*assignor*) his heirs &c. are thereby agreed to be paid performed and observed *In witness &c.* No. CLXI.
Agreement.

No. CLXII.

Assignment of an Agreement for the Sale of Timber for securing the Payment of Debts (by Indorsement). No. CLXII.
Agreement.

Know all Men That I (assignor) of &c. for the further and better securing the payment of all the debts mentioned in the schedule hereunto annexed do hereby grant and assign unto (assignee) of &c. his executors &c. All those the within written articles and all monies hereafter due or to be paid thereon and the full benefit profit and advantage thereof from and after the day of last past To have and to hold the said articles and all the said monies due and payable thereon and the full benefit profit and advantage thereof unto the said (assignee) his executors administrators and assigns Upon trust That he the said (assignee) do and shall receive and take of and from the person or persons liable to pay the same all such sum and sums of money as shall become due and payable by force and virtue of the within written articles and pay and apply the same money in discharge of the costs and charges of the trusts hereby created and after payment of the same In trust to pay and discharge the principal money and interest due to the several persons in the schedule hereunto annexed or so far as the same will extend in rateable proportions And for the purposes afore-said I the said (assignor) Have made &c. [Power of Attorney, see last precedent] to ask demand sue for recover and receive all such sum and sums &c. which shall grow due and payable &c. and to make do and execute all such other acts and deeds for the better enabling the said (assignee) his executors &c. to recover and receive aⁿ such sums &c. as he the said (assignee) his &c. or his counsel in the law shall advise or require I the said (assignor) agreeing to ratify and confirm whatsoever shall be lawfully done in and about the premises In witness &c.

No. CLXIII.

Annuity.

No. CLXIII.

Assignment of an Annuity by a Wife to Executors for discharging her Husband's Debt to the Testator.

Recital of grant
of annuity to
wife.

Death of testa-
tor.

Debt from hus-
band to testa-
tor.

Bond from
husband to
executors.

Executors
agree to be
paid by instal-
ments.

This Indenture made &c. Between (Assignor) wife of (Husband) of &c. of the first part the said (H.) of the second part and (Executors) of the third part *Whereas* I. S. late of &c. deceased duly made and published his last will and testament in writing bearing date &c. and did thereby bequeath unto the said (A.) during the term of her natural life one annuity or clear yearly sum of £ of lawful &c. for her sole and separate use payable quarterly free and clear of the legacy duty and all other taxes and deductions whatsoever And the said testator appointed the said (E.) executors of his will *And whereas* the said I. S. departed this life on or about the day of without having altered or revoked his said will and shortly after his decease the said will was duly proved by the said (E.) in the Consistory Court of *And whereas* the said (H.) was indebted to the said I. S. at the time of his decease in the principal sum of £ secured to the said I. S. by the bond of the said (H.) dated the day of in the penal sum of £ *And whereas* by bond under the hand and seal of the said (H.) bearing date the &c. the said (H.) became bound unto the said (E.) as executors aforesaid in the sum of £ with a condition thereunder written by which after reciting the said bond dated the &c. and the will and death of the said I. S. And after reciting that all interest due on the said sum of £ had been duly paid up to the date of the now reciting bond but that it was not in the power of him the said (H.) to pay off the said sum of £ in any other way than by instalments after the rate of £ per annum with interest they the said (E.) had agreed to accept payment thereof in that way *It is declared* That if the said (H.) his heirs executors or administrators should pay unto the said (E.) or unto the survivors or survivor of them his or her executors or administrators the sum of £ with interest for the same after the rate of £ for every 100*l.* by the year by instalments on the days and times and in manner therein mentioned (that is to say) the sum of £ with half a year's interest on the said sum of £ on the day of thence next ensuing the further sum of £ with half a year's interest on the then remaining part of the said principal sum of £ on &c.

And also should on the day of and the day No. CLXIII.
of in each succeeding year by half-yearly payments pay Annuity.
the like sum then the said bond or obligation shall be void And Judgment entered up on
whereas the payment of the said sum of £ and interest by warrant of attorney.
instalments as hereinbefore mentioned was further secured to
the said (E.) as executors as aforesaid by a warrant of attorney
under the hand and seal of the said (H.) bearing date &c. for
confessing judgment against him in an action of debt in the
Court of Common Pleas at Westminster at the suit of the said
(E.) for the said sum of £ And whereas no part of the said
sum of £ hath been paid by the said (H.) pursuant to the
condition in the said recited bond of day of and in conse-
quence of such default in payment the said (E.) entered up judg-
ment pursuant to the said warrant of attorney for the sum of
£ and costs of suit but no execution hath been sued out on
the said judgment And whereas all interest hath been paid up
to the day of the date of these presents And whereas the said
(H.) being at present unable to pay any part of the said principal
sum of £ the said (A.) at his request hath agreed to transfer Agreement on
the said annuity or yearly sum of £ bequeathed to her as the part of wife
aforesaid unto the said (E.) Upon such trusts as are hereinafter to assign her
declared for securing the payment of the said sum of £ annuity to exe-
and the interest thereof by instalments And in consideration thereof cutors.
the said (E.) have agreed to enter into the covenants hereinafter
contained for postponing the enforcement of the immediate pay-
ment of the said sum of £ in manner hereinafter mentioned
Now this Indenture witnesseth That in pursuance of the said re- Testatum.
cited agreement on the part of the said (A.) the said (A.) at the
request and by the direction of the said (H.) testified by his being
a party to and executing these presents Doth hereby grant and
assign unto the said (E.) All that the said annuity or yearly sum
of £ in and by the said recited will of the said I. S. deceased
given and bequeathed to the said (A.) as aforesaid Together with
all powers remedies and means whatsoever requisite and necessary
for recovering receiving and giving effectual receipts releases and
discharges for the same annuity and every part thereof And all
the right title and interest trust property claim and demand what-
soever of her the said (A.) in to and out of the same annuity
or yearly sum of £ and all arrears and growing payments
thereof To have hold receive take and enjoy the said annuity Habendum.
or yearly sum of £ and the arrears and growing payments
thereof Together with the said powers remedies and means for

No. CLXIII. recovering and enforcing payment thereof as aforesaid unto the said (*E.*) their executors administrators and assigns henceforth during the life of the said (*A.*) *Nevertheless* upon and for the trusts intents and purposes hereinafter expressed and declared of

Annuity.
To executors. Upon trust. and concerning the same (that is to say) *Upon trust* that they the said (*E.*) or the survivors or survivor of them or the executors administrators or assigns of such survivor do and shall from time to time when and as the said annuity or yearly sum of £ shall become payable receive and retain the same annuity and every part thereof And shall and do yearly and every year until the whole of the principal sum of £ and the interest upon or in respect of the same shall be fully paid and satisfied [in case the said (*A.*) should so long live] by and out of the said annuity or yearly sum of £ pay and satisfy unto the said personal representatives or representative for the time being of the said I. S. deceased the interest which at the end of each half year shall be due and payable upon the said sum of £ or upon so much thereof as shall from time to time remain unpaid The first half-yearly payment of interest to be made at the end of six calendar months to be computed from the day of last past And also at the end of each succeeding half year by and out of the said annuity or yearly sum of £ pay and satisfy unto the personal representatives or representative for the time being of the said I. S. deceased the sum of £ in or towards the payment or satisfaction of so much of the said sum of £ by way of half-yearly instalments And subject and without prejudice to the payments aforesaid *Upon trust* that they the said (*E.*) their executors administrators and assigns shall and do stand possessed of and interested in the said annuity or yearly sum of £ or so much thereof as shall not be disposed of under the trusts aforesaid *In trust* for the said (*A.*) and her assigns And it is hereby agreed and declared between and by the said parties hereto that the receipt or receipts of the said (*E.*) or of the survivors or survivor of them or the executors administrators or assigns of such survivor shall be a good and effectual discharge for the said annuity or yearly sum of £ unto the person or persons paying the same for as much thereof as in such receipt or receipts shall be expressed or acknowledged to be received and that the person or persons paying the said annuity or yearly sum or any part thereof and taking such a receipt or receipts for the same as aforesaid shall not be bound or obliged to see to the

To pay principal debt and interest by annual instalments.

To pay surplus to assignor.

Trustees to give receipts.

application or be anywise answerable or accountable for the loss misapplication or nonapplication of the money which in such receipt or receipts shall be expressed to be received or any part thereof *And* in consideration of the premises the said (*E.*) for themselves severally and for their respective heirs executors and administrators do hereby covenant with the said (*H.*) his heirs executors and administrators and every of them That they the said (*E.*) or any of them or any of their heirs executors administrators or assigns or the executors administrators or assigns of the said I. S. deceased shall not nor will at any time during the life of the said (*A.*) put the said bonds or either of them in force or bring commence or prosecute any suit or other proceeding at law or in equity against the said (*H.*) his heirs executors or administrators for recovering or compelling payment of the said sum of £ or any part thereof or the interest thereof or upon or by virtue of the said judgment so entered up against the said (*H.*) in pursuance of the said warrant of attorney as aforesaid *Provided always* and it is hereby declared and agreed by and between the parties hereto that in case the said (*A.*) shall happen to die before the whole of the said principal sum of £ and all interest upon or in respect of the same shall be fully paid and satisfied Then and in such case it shall be lawful for the said (*E.*) their executors administrators or assigns or any of them or the executors for the time being of the said I. S. at any time or times after the death of the said (*A.*) to enforce the said recited bonds or either of them and bring commence and prosecute any action suit or other proceeding at law or in equity against the said (*H.*) his executors or administrators for recovering and enforcing payment of the said sum of £ or any part thereof or the interest thereof *In witness &c.*

No. CLXIII.

Annuity.

Covenants from the executors.

Not to put bond in force

until after the death of assignor.

No. CLXIV.

Assignment of an Annuity by Indorsement.

No. CLXIV.

Annuity by Indorsement.

To all to whom these Presents shall come (assignor) of &c. sendeth greeting *Whereas* all arrears of the within mentioned annuity yearly rent-charge or annual sum of £ by the within written indenture granted to him the said (*assignor*) his executors administrators and assigns during the term of his natural life as within mentioned have been fully paid and satisfied

Recital that all arrears are paid.

No. CLXIV. <u>Annuity by Indorsement.</u>	to the said (<i>assignor</i>) up to the day of the date hereof <i>Now know ye</i> That in consideration of the sum of £ of &c. by (<i>assignee</i>) of &c. to the said (<i>assignor</i>) now well and truly paid the receipt of which is hereby acknowledged he the said (<i>assignor</i>) doth grant and assign unto the said (<i>assignee</i>) his executors administrators and assigns <i>All</i> the said annuity or yearly sum of £ payable and issuing out of the messuage and premises in the within mentioned indenture and thereby granted <i>And</i> also all the estate right interest claim and demand whatsoever of him the said (<i>assignor</i>) of in and to &c. <i>To have</i> &c. the said annuity &c. unto the said (<i>assignee</i>) his executors &c. during the term of the natural life of the said (<i>assignor</i>) with full power and authority for him the said (<i>assignee</i>) his executors &c. to recover and receive the same in as large ample and beneficial a manner to all intents and purposes as he the said (<i>assignor</i>) might could should or ought to have enjoyed the same if these presents had not been made <i>And</i> the said (<i>assignor</i>) for himself &c. doth hereby covenant with the said (<i>assignee</i>) his executors administrators and assigns that he the said (<i>assignor</i>) now hath good right and full power to assign the said annuity or yearly rent-charge hereby assigned or intended so to be <i>And also</i> that he hath not heretofore charged discharged or incumbered the said annuity or yearly rent-charge hereby assigned or intended so to be or any part thereof <i>And also</i> that he the said (<i>assignee</i>) his executors &c. shall and lawfully may peaceably and quietly have hold receive and enjoy the said annuity or rent-charge of £ to and for his and their proper use and benefit without any let suit trouble hindrance molestation or interruption whatsoever of from or by him the said (<i>assignor</i>) his executors &c. or any other person or persons whatsoever and that free and clear and freely clearly and absolutely discharged and exonerated from all charges and incumbrances whatsoever <i>And further</i> that he the said (<i>assignor</i>) will from time to time during the life of the said (<i>assignor</i>) at the request of the said (<i>assignee</i>) but at the cost of the said (<i>assignor</i>) do all such acts for further assigning and assuring the said annuity or yearly rent-charge unto the said (<i>assignee</i>) his executors administrators or assigns in manner aforesaid as by the said (<i>assignee</i>) his executors administrators or assigns shall be reasonably required <i>In witness</i> &c. N.B. <i>In a case of this kind it must be considered by the assignor whether the covenants should be restricted to his own acts and those claiming under him.</i>
Habendum.	
Covenants from assignor.	
Good right to assign.	
Quiet enjoy- ment.	
Free from in- cumbrances.	

No. CLXV.

Assignment of Exchequer Annuities.

No. CLXV.

*Exchequer
Annuities.*

Know all Men by these Presents That for and in consideration of the sum of £ to me (*assignor*) of &c. in hand well and truly paid by (*assignee*) of &c. the receipt whereof is hereby acknowledged I the said (*assignor*) *Do* hereby grant bargain sell and assign unto the said (*assignee*) the several orders bearing date &c. made unto and in the name of me the said (*assignor*) by virtue and in pursuance of an act of parliament passed in the year &c. entitled &c. in consideration of the respective sums therein paid by me into the receipt of her Majesty's Exchequer for the same which orders are of the several numbers and for the several annuities or yearly sums payable by four equal quarterly payments for the term of years to be computed from the &c. as follows viz. one number [*set out the several numbers*] Together with the several tallies made and struck for the purchase-money of the said respective annuities *And also* the said annuities or yearly sums payable by or upon the said orders respectively during the residue of the said term of years respectively and all the estate &c. of me the said (*assignor*) of and in the said several orders tallies and annuities aforesaid *To have* &c. the said several annuities and every of them and every part thereof unto the said (*assignee*) his executors administrators and assigns to his and their proper use and benefit for and during the residue &c. of the said term of years yet to come and unexpired in as ample and beneficial a manner as the said (*assignor*) could have enjoyed the same if these presents had not been made free and clear from all charges and incumbrances made done or committed by me the said (*assignor*) or any other person or persons whomsoever *In witness* &c.

No. CLXVI.

Assignment of Articles of Clerkship to surviving Partner (a).

No. CLXVI.

*Articles of
Clerkship.*

This Indenture &c. Between E. F. of &c. spinster of the first part W. D. the younger of &c. of the second part W. D. the

(a) See *ante*, pp. 306—308.

No. CLXVI.

*Articles of
Clerkship.*Recital of ar-
ticles of clerk-
ship.

elder of &c. merchant and father of the said W. D. the younger of the third part and G. F. of &c. gentleman one of the attornies of her Majesty's Courts of Queen's Bench and Common Pleas at Westminster and brother and late copartner of W. F. deceased of the fourth part *Whereas* by an indenture of clerkship bearing date the day of and made between the said W. F. deceased late one of the attornies &c. as aforesaid of the one part and the said W. D. the elder and W. D. the younger of the other part the said W. D. the younger with the consent and approbation of his said father testified as is therein mentioned did put place and bind himself clerk to the said W. F. to serve him in the practice of an attorney at law and solicitor in Chancery from the day of the date of the said indenture for and during the term of five years from thence next ensuing and under and subject to such covenants articles and agreements as in the said indenture mentioned *And whereas* the said W. F. departed this life on or about the day of last past having duly made and published his last will and testament in writing bearing date the day of the same month of and thereby named and appointed his sister the said E. F. his executrix of his said will who on or about the day of the said month duly proved the same in the Prerogative Court of the Archbishop of Canterbury *Now this Indenture witnesseth* That the said E. F. for divers good causes and considerations her thereunto moving at the desire of the said W. D. the younger and with the consent and approbation of the said W. D. the elder testified by their severally executing these presents *Doth* assign unto the said G. F. his executors administrators and assigns as well the said recited indenture of clerkship and all benefit thereof as also all the right interest service profit advantage claim and demand whatsoever and howsoever to arise or be had from henceforth of the service of the said W. D. the younger during the now residue of the said term of five years by force and virtue of the said recited indenture or otherwise howsoever Subject nevertheless to the several covenants articles and agreements mentioned and contained in the said recited indenture on the part of the said W. F. his executors administrators or assigns to be done and performed *To have and to hold* the said indenture of clerkship and all benefit and advantage to arise therefrom unto the said G. F. his executors administrators and assigns from henceforth for and during all the residue of the said term of five years now to come and unexpired in as ample

and beneficial a manner to all intents and purposes as she the said E. F. can or may assign the same but nevertheless subject as is hereinbefore mentioned *And* the said W. D. the younger doth hereby covenant and agree with the said G. F. his executors and administrators that he the said W. D. &c. shall and will well and truly serve the said G. F. during the residue of the said term of five years as such clerk as aforesaid and truly observe perform and keep all and singular the covenants articles and agreements in the said indenture of clerkship mentioned and on his part and behalf to be done and performed *In witness &c.*

No. CLXVI.
*Articles of
Clerkship.*

No. CLXVII.

Assignment of Articles of Clerkship by Indorsement.

No. CLXVII.
By Indorsement.

Know all Men by these Presents That the said within named parties having mutually agreed to vacate the within written contract the within named (*assignor*) at the request and by and with the approbation of the within named (*clerk's father*) and (*clerk*) testified by their severally signing and sealing these presents *Hath* assigned and turned over the said (C.) to (*assignee*) of &c. gentleman to serve him as his clerk under the conditions within mentioned for the remainder of the within mentioned term of

years *And* the said (*assignee*) in consideration of £ in hand well and truly paid by the said (*assignor* or *clerk's father, or otherwise as the case may be*) *Hath* accepted taken and received him the within named (C.) to continue and be with him as his clerk during the remainder of the within mentioned term of years under the conditions in the within written articles mentioned *And* in consideration of the premises they the said (*assignor, father and clerk*) do hereby for themselves and their several executors administrators and assigns mutually release each other their executors and administrators of and from the within written articles and the performance of all the covenants and agreements therein contained *In witness &c.*

Assignment to
new principal.

Release from
assignor, father
and clerk.

No. CLXVIII.

Bill of Sale.

No. CLXVIII.

Assignment of Bill of Sale of Goods.

Stamp.

Obs. 1. As to the nature of a bill of sale, see *post*, BILLS OF SALE.2. An *ad valorem* stamp on the consideration money.Recital of sale
to vendor.

To all to whom these Presents shall come (Assignor) of &c.
 sendeth greeting *Whereas (Vendor) of &c.* in and by his deed
 or bill of sale under his hand bearing date &c. did for the con-
 sideration therein expressed bargain sell and deliver unto me the
 said (*assignor*) my executors administrators and assigns all and
 every the goods implements and wares remaining and being &c.
 as in the schedule or inventory to the same deed or bill of sale
 annexed are more particularly expressed *Now know ye* That in
 consideration of the sum of £ in hand to me well and

Testatum.

truly paid by (*assignee*) of &c. the receipt &c. I the said (*as-
 signor*) *Do* hereby grant assign transfer and set over in plain
 and open market *All* and every the goods wares and imple-
 ments in the above recited bill of sale and in the schedule
 thereunto annexed mentioned and thereby bargained and sold
 or expressed to be so as aforesaid *To have and to hold* all and
 every the goods wares and implements hereby assigned or in-
 tended so to be unto the said (*assignee*) his executors adminis-
 trators and assigns to and for his and their own benefit and as
 his and their proper goods and chattels from henceforth for ever
And I the said (*assignor*) do hereby for myself my executors
 &c. covenant &c. with the said (*assignee*) his &c. That the said
 deed or bill of sale is a good and valid instrument and that the
 premises hereby assigned or otherwise assured or intended so to
 be with the appurtenances are and shall remain and continue
 unto the said (*assignee*) his executors administrators and assigns
 free and clear of and from all former and other rights titles
 charges liens and incumbrances whatsoever done committed or
 suffered by the said (*assignor*) and the said (*V.*) or any other
 person whatsoever *In witness &c.*

Habendum.

Free from in-
cumbrances.

No. CLXIX.

Bill of Sale.

No. CLXIX.

Assignment of a Conditional Bill of Sale.

To all to whom these Presents shall come I (*assignor*) of &c.
 send greeting *Whereas (V.) of &c.* in and by &c. did &c. [*see*

last precedent] Subject nevertheless to a proviso or condition for making void the same as in the within written bill of sale is contained in that behalf *Now know ye* That &c. in consideration &c. I the said (*assignor*) *Do* grant &c. unto the said (*assignee*) all &c. [*with power to bring actions and suits in assignor's name*] *To have* &c. as fully and beneficially as I the said (*assignor*) might have held and enjoyed the same Subject nevertheless to the proviso for redemption as aforesaid *And* I the said (*assignor*) *do* hereby for myself &c. covenant with the said (*assignee*) his &c. That the said debt or sum of £ is still due and owing *And* that I the said (*assignor*) have not done or suffered and shall not nor will at any time hereafter do or suffer any act whereby the said (*assignee*) his executors &c. shall be prevented or hindered from recovering the said debt or sum of £ hereby assigned or any part thereof *And also* that if default shall happen to be made in payment of the said sum of £ and interest thereof I the said (*assignor*) my executors &c. shall and will at the request costs and charges of the said (*assignee*) make do and execute all such other acts deeds and things for the better enabling the said (*assignee*) his &c. to recover and receive the said sum of £ as by the said (*assignee*) his executors &c. or his or their counsel in the law shall be reasonably advised or required *And* the said (*assignee*) doth hereby for himself his executors &c. covenant &c. with the said (*assignor*) his executors &c. That he the said (*assignor*) his &c. shall and will at all times hereafter save harmless and indemnified the said (*assignor*) his executors &c. of from and against all costs charges damages and expenses whatsoever which shall or may fall upon or become payable by the said (*assignor*) his executors or administrators for or by reason of any action or suit or other legal or equitable proceeding which shall or may be brought or prosecuted in the name or names of the said (*assignor*) his &c. by virtue of these presents or otherwise *In witness* &c.

No. CLXIX.

Bill of Sale.

Testatum.

Habendum.

Covenants from assignor.

Debt is subsisting.

No act to incumber.

Further assurance.

Indemnity from assignee.

ASSIGNMENTS OF BONDS.

- | | | |
|---------------------------------|--|-----------------------|
| 1. Bonds not assignable at Law. | | 3. Notice to Obligor. |
| 2. Bond deemed satisfied, when. | | 4. Stamp. |

Bonds not assignable at law.

SECT. 1. Bonds, being *choses in action*, so called because they cannot be reduced into possession except in due course of law, are not properly assignable by the common law, 1 Inst. 232; therefore, if on an assignment an action is brought, it must be brought in the name of the obligee, and for the same reason a power of attorney and a covenant from the obligee not to release the debt or revoke his power must form a part of every such deed.

Bond deemed satisfied, when.

2. No assignment of a bond should be taken, unless there be evidence that the debt is still subsisting, as the courts have made it a rule to direct the jury to find a bond satisfied after a lapse of twenty years, without demand or acknowledgment, 1 Ves. 51. This is confirmed by 3 & 4 Will. 4, c. 42, ss. 3, 5, which provides that no action of debt or covenant shall be brought upon any bond or other specialty but within twenty years, unless there be an acknowledgment in writing by the party liable or part payment on account of principal or interest. See Shelford's Real Prop. Stat. pp. 269—275, 6th ed.

Notice to obligor.

3. On an assignment of a bond, notice must be given to the obligor, otherwise payment by him to the obligee will be good. As to the assignment of bonds and other *choses in action*, see further ASSIGNMENTS, Pref. sects. 2, 4, pp. 344, 346.

Stamp.

4. An *ad valorem* duty on the consideration money, see Pref. sect. 9, p. 347.

No. CLXX.

Bond.

No. CLXX.

Assignment of a Bond.

Recital of bond.

This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Whereas (obligor) of &c. by a certain bond or obligation under his hand and seal duly executed bearing date on or about the day of became bound to the said (assignor) in the penal sum of £ of &c. with a condition thereunder written to be void on payment by said (obligor) unto the said (assignor) his executors administrators or assigns of the full sum of £ And whereas the said (assignee) hath agreed to pay to the said (as-

Agreement to advance money.

signor) the sum of £ upon having an assignment made to him the said (*assignee*) of the said in part recited bond and all principal and interest due and to become due thereon in manner as hereinafter mentioned *Now this Indenture witnesseth* That in consideration of the sum of £ of &c. to the said (*assignor*) by the said (*assignee*) well and truly paid at &c. He the said (*assignor*) *Doth* hereby bargain sell and assign unto the said (*assignee*) his executors administrators and assigns *All that* the said in part recited bond or obligation and all monies hereafter to become due and payable thereupon or by force or virtue thereof and all the right title benefit advantage claim and demand whatsoever of the said (*assignor*) of and in the same premises and every or any part thereof *To have* hold receive and take the said bond or obligation and premises hereby assigned or intended so to be unto the said (*assignee*) his executors administrators and assigns for his and their proper use *And* for the considerations aforesaid the said (*assignor*) doth hereby constitute and appoint the said (*assignee*) his executors administrators and assigns his true and lawful attorney and attornies in the name or names of the said (*assignor*) his executors administrators or assigns to ask demand and receive all and every the sum and sums of money now due or hereafter to become due upon the said bond or obligation and on non-payment thereof or any part thereof in the name or names of the said (*assignor*) his executors or administrators but at the proper costs and charges of the said (*assignee*) his executors administrators or assigns to commence and prosecute with effect any actions or suits against the said (*obligor*) his executors or administrators until full satisfaction and payment of the said sum of £ And on receipt thereof to cancel or deliver up the said bond or obligation or to make and give good and sufficient releases and discharges for the sum or sums of money so received and finally in his name to do perform and execute all such further and other acts deeds matters and things touching the premises as the said (*assignee*) his executors &c. shall deem requisite He the said (*assignor*) for himself &c. hereby ratifying and confirming whatsoever the said (*assignee*) his executors &c. shall lawfully do in or about the premises by virtue of these presents and one or more attorney or attornies under him and them from time to time to substitute or appoint for the purposes aforesaid *And* the said (*assignor*) for himself his executors and administrators doth hereby covenant with the said (*assignee*) his

No. CLXX.

Bond.

Testatum.

Habendum.

Power of attorney.

Covenants.

No. CLXX. <u>Bond.</u>	executors &c. That the said bond at the time of the sealing and delivery of these presents is in full force and valid and effectual in the law and not assigned released vacated cancelled or otherwise made void <i>And also</i> that he the said (<i>assignor</i>) his executors or administrators shall not nor will at any time hereafter receive the said monies due or to become due on the said bond or obligation or any part thereof nor revoke invalidate hinder or make void these presents or any authority or power hereby given without the licence or consent of the said (<i>assignee</i>) his executors &c. first had and obtained in writing for that purpose <i>And</i> the said (<i>assignee</i>) for himself his executors administrators and assigns doth hereby covenant &c. with the said (<i>assignor</i>) his executors and administrators That he the said (<i>assignee</i>) his &c. shall and will at all times indemnify the said (<i>assignor</i>) his &c. of from and against all costs charges expenses and damages which he or they or any of them shall pay sustain or be put unto for or by reason or on account of any proceedings to be had either at law or in equity on account of the premises by virtue or means of these presents so as the same do not arise or accrue through the collusion or act of the said (<i>assignor</i>) his executors or administrators <i>In witness &c.</i>
Bond still subsisting.	
Assignor not to receive money, nor revoke power.	
Assignee to indemnify assignor.	

No. CLXXI.

No. CLXXI.
Bond and Judgment. Assignment of a Bond and Judgment by a Husband and a Wife as a Security for a Debt.

Obs. Bonds being *choses in action*, a husband has not the power of assigning them; he has only the power of reducing them into possession during his life. If he assign them, the assignee standing in his place may, during his life, sue in the name of the husband; but if he die before the assignee has reduced them into possession, the right of action will survive to the wife, 1 Rop. Hus. & W. 225; and equity will not support the husband's assignment of a wife's bond, although made for a valuable consideration, *Burnet v. Kinaston*, 2 Freem. 239; *S. C.* 2 Vern. 401; *Prec. in Cha.* 121; *Parker* (in *Prec. Cha.* 412, *nom. Packer*) *v. Wyndham*, *Gilb. Rep. Eq.* 98.

To all to whom these Presents shall come (*assignor*) of &c. and S. his wife late (*maiden name*) of &c. spinster send greeting
Recital of bond. *Whereas* (*obligor*) of &c. in or by one bond &c. became bound unto the said (*wife's maiden name*) before her intermarriage with

the said (*assignor*) in the penal sum of £ conditioned for No. CLXXI.
the payment of £ and interest at a day long since past (a) *Bond and Judg-*
And whereas default was made in payment of the said sum of *ment.*
£ and interest on the day mentioned in the condition of the
said in part recited bond and the said (*assignor*) did in
term last past obtain a judgment in her Majesty's Court at
Westminster in an action of debt on the said bond for the sum
of £ besides costs of suit against him the said (*obligor*) as
by the record of the judgment entered up in the same court re-
ference being thereto had will more fully appear *And whereas*
the said (*assignor*) having occasion to borrow the sum of £
hath requested the said (*assignee*) to advance the same and he
hath agreed so to do on having the said in part recited bond or
obligation Together with the said (b) judgment assigned to him
as a security for the repayment thereof *Now know ye* That in *Testatum.*
consideration of &c. to the said (*assignor*) and S. his wife or one
of them in hand paid by the &c. the receipt of which the said
(*assignor*) and S. his wife do hereby acknowledge and of and
from the same do acquit and discharge the said (*assignee*) his
executors &c. He the said (*assignor*) and S. his wife do and
each of them doth hereby bargain sell and assign unto the said
(*assignee*) his executors administrators and assigns *All that* the
hereinbefore recited bond or obligation and also the principal
and interest thereon secured as aforesaid and all and every
other sum or sums of money now due or which at any future
time shall become due and payable on the same Together with
the said judgment (c) so recovered thereupon as aforesaid and
all benefit and advantage to be had or derived thereon and all
the estate right title interest property claim and demand what-
soever of &c. *To have* &c. the said bond &c. and the said judg- *Habendum.*
ment and all and singular the sum and sums of money thereon
secured and hereby assigned and intended so to be unto the
said (*assignee*) his executors &c. for his and their own proper use

(a) If it be a judgment obtained on a warrant of attorney, say, "*And
whereas* for the better securing the payment of the said sum of £ the
said (*obligor*) executed a warrant of attorney bearing even date with the
said bond authorizing certain attorneys therein named to confess judgment
thereupon in her Majesty's Court of *And whereas* judgment was
confessed and entered on record of the said court as of term then next
ensuing as by reference thereto will more fully appear."

(b) Or, "the said warrant of attorney and judgment."

(c) Or, "so entered up."

No. CLXXI. in as full and ample a manner to all intents and purposes as they the said (*assignor*) and S. his wife or either of them could or might have held or enjoyed the same in case these presents had not been made Upon this condition nevertheless and it is the true intent and meaning of these presents that if they the said (*assignor*) and S. his wife or either of them or either of their executors administrators or assigns shall and do well and truly pay or cause to be paid unto the said (*assignee*) his executors administrators or assigns the full sum of £ on the day of next ensuing *Then* he the said (*assignee*) his executors &c. shall deliver up the said bond or obligation and judgment and these presents are to be cancelled and made void anything either at law or in equity herein contained to the contrary thereof in anywise notwithstanding *And* the said (*assignor*) and S. his wife do hereby constitute the said (*assignee*) &c. his and their true &c. attorney or attornies in their names or in the names of their executors but for the sole and proper use and benefit of the said (*assignee*) his executors &c. to ask demand and receive all such sum and sums of money as now are or shall become due and payable on the said bond &c. from and after the said day of next ensuing in case the said sum of £ should not then be fully paid and satisfied *And* upon non-payment thereof or of any part thereof to sue and prosecute to effect any execution or executions or other process whatsoever as shall be deemed necessary and expedient for receiving and recovering the same *And* on payment thereof to deliver up and cancel the said bond and to give discharges for the same and to acknowledge or cause to be acknowledged satisfaction upon the said judgment and to do and act in every thing relating to the same as the said (*assignor*) and S. his wife or either of them might or could have done had not these presents been made He the said (*assignee*) his executors administrators and assigns rendering and paying to them the said (*assignor*) and S. his wife or either of them their or either of their executors administrators or assigns the surplus or remainder of the said money that shall become due and payable to them the said (*assignor*) and S. his wife their executors or either of them on the said bond and which he the said (*assignee*) shall receive thereupon after deducting what shall be justly due and owing to the said (*assignee*) at the time of such receipt and payment *And* the said (*assignor*) doth hereby for himself his heirs executors and administrators covenant with the said (*assignee*)

No. CLXXI.
Bond and Judgment.

Power of attorney.

Covenants from the assignor.

his executors administrators and assigns that they the said	No. CLXXI.
(assignor) and S. his wife one of them or their or one of their	Bond and Judg-
executors &c. shall &c. pay &c. And that the said bond &c.	ment.
[is still subsisting &c. and for further assurance, as in the two last	To pay debt,
precedents].	&c.



Assignment of a Bond and Policy of Insurance to Trustees of a Marriage Settlement, upon the Trusts to be declared by Settlement, see post, SETTLEMENTS.



No. CLXXII.

Assignment of Part of the Cargo of a Ship.

No. CLXXII.
Cargo.

<i>To all to whom these Presents shall come (assignors) of &c.</i>	
<i>Whereas there is a cargo or adventure of timber on board the</i>	Recital of the
<i>ship lying at called of the burden of tons or</i>	<i>cargo.</i>
<i>thereabouts of which the said (assignors) are part owners And</i>	
<i>whereas the said (assignee) of &c. hath agreed to pay the sum of</i>	
<i>£ for one part of the said cargo Now know ye That in</i>	
<i>consideration of the sum of £ so paid at or before &c. the</i>	
<i>receipt whereof is hereby acknowledged They the said (assignors)</i>	
<i>Do hereby grant &c. unto the said (assignee) his executors &c. one</i>	
<i>full and equal half part of the said cargo on board the said ship</i>	
<i>and of all the produce proceeds effects gains and advantage in</i>	
<i>respect thereof and all the right &c. of in and to the same To</i>	
<i>have &c. unto the said (assignee) his executors &c. to his and</i>	
<i>their own use and as his and their proper goods and chattels for</i>	
<i>ever And they the said (assignors) do jointly and severally</i>	Covenants from
<i>covenant &c. with the said (assignee) his &c. in manner following</i>	<i>assignors.</i>
<i>(that is to say) That the said (assignee) his &c. shall and may at</i>	
<i>all times hereafter have take receive and enjoy to his and their</i>	Quiet enjoy-
<i>own proper use and benefit all and every the produce proceeds</i>	<i>ment.</i>
<i>effects profit and advantage by and in respect of the said moiety</i>	
<i>hereby assigned of the said cargo or adventure of timber laden</i>	
<i>in the said ship without any let suit trouble denial or interruption</i>	
<i>of from or by the said (assignors) their executors &c. And that</i>	Free from in-
<i>free and clear of all former bargains sales assignments debts</i>	<i>cumbrances.</i>
<i>charges and incumbrances whatsoever by them or either of them</i>	
<i>committed done or suffered And that they the said (assignors)</i>	

No. CLXXII. their executors &c. will at all times hereafter do perform and
Cargo. execute such further acts deeds and things for the better assign-
 Further as- ing and assuring the said premises hereby sold and assigned unto
 surance. the said (*assignee*) his &c. and for enabling him and them to de-
 demand and receive the same to his and their own proper use and
 benefit as by him or them or his or their counsel shall be reason-
 ably advised and required *In witness &c.*

—◆—

No. CLXXIII.

No. CLXXIII.

Debenture.

Assignment of a Debenture by way of Collateral Security.

This Indenture made &c. Between (assignor) of &c. of the one
 Recital of loan. *part and (assignee) of &c. of the other part Whereas the said*
(assignee) hath lent and advanced to the said (assignor) the sum
of £ for the repayment of which with interest a certain
messuage and tenement and several lands and hereditaments
 Conveyance by *situate &c. were by an indenture of of even date with these*
 lease and re- *presents and made between the said (assignor) of the first part*
 lease. *the said (assignee) of the second part and (trustee) of the third*
part conveyed by the said (assignor) unto and to the use of the
 Assignor pos- *said (assignee) and his heirs by way of security And whereas*
 sessed of a de- *the said (assignor) hath a debenture marked No. and signed*
 benture. *by the commissioners of her Majesty's Transport Service for the*
sum of £ which is due and owing to the said (assignor)
for the service and employ of the ship or vessel called
burthen tons or thereabouts of which the said (assignor) is
 Testatum. *the owner Now this Indenture witnesseth That for the better*
securing the payment of the said sum of £ and interest
unto the said (assignee) his executors &c. He the said (assignor)
 Assignment. *doth hereby grant bargain sell assign transfer and set over unto*
the said (assignee) his executors administrators and assigns All
that the said sum of £ so now due and owing from her
Majesty's Government to the said (assignor) as owing to the said
ship and all benefit and advantage to be made of the same by
 Proviso for *sale or otherwise Provided always and the said (assignee) doth*
 making void *hereby for himself covenant &c. with the said (assignor) That if*
 the assignment. *he the said (assignor) shall well &c. pay &c. unto the said (as-*
signee) his executors &c. the full sum of £ according to a
proviso or covenant on the behalf of the said (assignor) to be
performed as in the said in part recited indenture is mentioned
and contained Then the assignment hereby made shall cease and

be void to all intents and purposes and the said (*assignee*) his executors &c. shall deliver the said debenture safe and uncanceled unto the said (*assignor*) his executors &c. free and all inevitable accidents excepted And the said (*assignor*) doth hereby for himself his executors and administrators covenant with the said (*assignee*) his executors &c. That it shall and may be lawful to and for the said (*assignee*) his executors &c. at any time after the date of these presents to deliver up the said debenture to any person or persons who shall pay unto him or them the said sum of £ thereupon due or to sell and dispose of the said debenture and all monies thereupon due And it is hereby declared and agreed by and between the parties hereto that all monies which shall be received by the said (*assignee*) his executors administrators or assigns upon such delivery selling or disposition as aforesaid of the said debenture shall be received and taken so far as the same monies will extend towards the payment and discharge of such interest and principal monies as shall at the time of such receipt be due upon the said in part recited indenture of mortgage And it is hereby declared and agreed that the receipt of the said (*assignee*) his executors administrators or assigns for the purchase-money of the premises sold or any part thereof shall effectually discharge the purchaser or purchasers therefrom and from being concerned in the application thereof or being accountable for the misapplication or nonapplication thereof *In witness &c.*

No. CLXXIII.
Debenture.

Power to sell
debenture.

Mortgagee's
receipt to be a
discharge.

Assignment for the Payment of Debts, see post, COMPOSITION.

No. CLXXIV.

Assignment of a Debt by way of Collateral Security.

No. CLXXIV.
Debt.

Obs. As to the assignment of debts and other *choses in action*, see Pref. sect. 1.

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* by an indenture bearing date on or about the day of and made or expressed to be made between A. B. of the first part C. D. of the second part and the said (*assignor*) of the third part all the book debts and sums of money then and thenceforth to become due in respect of a certain newspaper printed at

Recital of as-
signment to
assignor.

No. CLXXIV. and called together with all presses types and printing
Debt. materials and all other the effects used and employed in printing
publishing and carrying on the said newspaper were for the con-
siderations therein mentioned duly assigned to and are now vested
in the said A. B. and the said (*assignor*) upon certain trusts
therein mentioned for the better carrying on the said newspaper
and paying off certain debts and incumbrances upon the same
Debt still due. which were due to the said (*assignor*) *And whereas* the principal
sum of £ is still due and owing to the said (*assignor*) with
Contract for interest for the same *And whereas* the said (*assignor*) hath
loan. applied to the said (*assignee*) to advance him the sum of £
which he hath consented to do upon having a grant of the said
principal sum of £ and interest due to the said (*assignor*)
Bond given by secured to him the said (*assignee*) by bond *And whereas* the
assignor. said (*assignor*) hath this day executed and given to the said
(*assignee*) a bond in writing bearing even date herewith and hath
thereby become bound to the said (*assignee*) in the penal sum of
£ with a condition thereunder written &c. upon payment
by the said (*assignor*) his heirs &c. unto the said (*assignee*) his
executors &c. of the sum of £ with interest for the same
after the rate of £ per cent. at the time and in the manner
Testatum. in the condition of the said bond thereafter mentioned *Now*
this Indenture witnesseth That in consideration of &c. to the said
(*assignor*) in &c. paid by the said (*assignee*) at &c. the receipt
whereof the said (*assignor*) doth hereby acknowledge and of
and from the same doth acquit release and discharge the said
(*assignee*) his executors &c. He the said (*assignor*) *Doth* grant
assign transfer and set over unto the said (*assignee*) &c. *All* that
principal sum of £ so due and owing to the said (*assignor*)
as hereinbefore is mentioned and all interest now and hereafter
to become due for or in respect of the same or any part thereof
and all and every security and securities for the same and all the
right title interest property possibility benefit claim and demand
whatsoever at law or in equity or otherwise howsoever of him
the said (*assignor*) of in to or out of the said principal sum and
interest and all and singular the premises hereby assigned or in-
tended so to be *With* full power and authority to and for the
said (*assignee*) his executors administrators and assigns to ask
demand sue for recover and receive and to give effectual receipts
and discharges for the same either in his or their own name or
names or in the name or names of the said (*assignor*) his exe-
cutors administrators or assigns *To have hold* receive and take

Power of at-
torney.

the said debt or principal sum of £ and interest and all and singular the premises hereinbefore assigned or intended so to be or any part thereof respectively unto the said (*assignee*) his executors &c. for his and their own proper use and benefit *Subject nevertheless to the proviso or condition for redemption thereof hereinafter mentioned (that is to say) Provided always* and it is hereby declared and agreed by and between the said parties hereto that if the said (*assignor*) his heirs executors administrators or assigns do and shall well and truly pay &c. *Then* the present assignment and every covenant clause article matter and thing herein contained shall cease determine and be void *And* the said (*assignor*) for himself his heirs &c. doth hereby covenant &c. with the said (*assignee*) his executors &c. That he the said (*assignor*) hath not done or suffered any act matter or thing whereby or by reason whereof the said (*assignee*) his executors &c. shall or may be hindered or prevented from recovering the said debt or principal sum of £ hereby assigned or intended so to be *And* that the said (*assignor*) his executors &c. shall not nor will during the continuance of the said debt or &c. or any part thereof on this security without the express consent or direction of the said (*assignee*) his executors &c. receive compound incumber or prejudice the same *And further* that the said (*assignor*) his executors &c. shall and will at the request of the said (*assignee*) his executors &c. but at the costs and charges of the said (*assignor*) his &c. make do and execute all such further and other lawful acts deeds assignments and assurances in the law for the better enabling him the said (*assignee*) his executors &c. to recover receive &c. the said principal sum of £ and any part thereof as by the said (*assignee*) his executors &c. or his or their counsel in the law shall be reasonably advised devised or required *In witness &c.*

No. CLXXIV.
Debt.

Proviso for redemption.

Covenants.

Assignor hath done no act to incumber.

Will not receive debt.

Further assurance.

No. CLXXV.

Another Assignment of a Debt. (Short Form.)

No. CLXXV.
Debt.

Know all Men by these Presents That in consideration of the sum of £ due by me to (*assignee*) of &c. and for better securing the payment of the same I do hereby assign unto (*assignee*) his executors &c. *All* that debt or sum of £ which is now due and owing to me from A. B. of &c. for goods

No. CLXXV. sold and delivered by me to the said A. B. and all my right title
Debt. &c. of in and to the said debt or sum of £ and every part
 thereof *To have* &c. the said debt &c. from henceforth to his
 and their proper use and benefit *Subject* nevertheless to the
 proviso &c. hereinafter contained *And* I do hereby constitute
 the said (*assignee*) my true and lawful attorney irrevocable and
 give and grant to him his executors &c. full power and authority
 in my name or the names of my executors &c. but to the only
 proper use and behoof of the said (*assignee*) his &c. to ask
 demand sue for levy recover receive compound acquit release
 and discharge the said debt or sum of £ and every or any
 part or parcel thereof and upon the receipt of the same or any part
 thereof acquittances on or proper discharges of to make and give
 and generally for me or in my name or in the names of my
 executors &c. to make do perform and execute all and every
 such further and other acts matters and things touching and con-
 cerning the premises as to the said (*assignee*) his &c. shall seem
 requisite and that as fully &c. *And* I do hereby covenant with
 and to the said (*assignee*) his &c. That I have not done or suf-
 fered and that I and my executors and administrators shall not
 nor will do or suffer any act whereby the said (*assignee*) shall be
 hindered from receiving and recovering the said debt or any
 part thereof and that I and my executors &c. shall and will at
 all times at the request of the said (*assignee*) but at my costs and
 charges do all other lawful acts for the further and more effec-
 tually assigning and assuring the said debt or sum of £
 and every part thereof *Provided always* and it is hereby
 agreed that if I the said (*assignor*) my executors or administrators
 shall well and truly pay to the said (*assignee*) his executors
 administrators or assigns the said sum of £ so due to him
 as aforesaid within three calendar months from the date hereof
 then this present assignment and every matter and thing herein
 contained shall cease determine and be void to all intents and
 purposes whatsoever *In witness* &c.

—◆—

Assignment of Copartnership Debts, see post, COPARTNERSHIP.

—◆—

No. CLXXVI.

No.
CLXXVI.

Assignment of Debt and Dividends under an Adjudication of Bankruptcy.

Debt and Dividends.

This Indenture made this day of Between
(*assignor*) of &c. of the one part and (*assignee*) of &c. of the
other part *Whereas* the said (*assignor*) stands justly and truly
indebted unto the said (*assignee*) in £ and upwards on the
balance of an account for monies paid laid out and expended
and for business done and performed and for journeys taken for
and on the behalf of the said (*assignor*) and in the prosecution
of suits at law and in equity and in the managing various matters
now in hand in his behalf *And whereas* the said (*assignor*) is not
at present able without considerable inconvenience to pay the
amount so as aforesaid now due and owing from him to the said
(*assignee*) and it will not be in his power for some time to come to
advance money for discharge of the expenses incident to the pro-
ceedings already commenced and others which are now about to
be instituted in his behalf by the said (*assignee*) *And whereas* the
said (*assignor*) as one of the creditors of (*bankrupt*) of &c. a
bankrupt hath proved a debt under an adjudication of bankruptcy
against him the said (*bankrupt*) to the amount of £ on
which no dividend hath as yet been made *And whereas* in
order to secure to the said (*assignee*) the payment of the balance
now due and owing to him from the said (*assignor*) with interest
for the same and to afford a security for the due payment of any
expenses which may be hereafter incurred by him in the affairs
of the said (*assignor*) as well as of all bills of costs and charges
that may hereafter be due to him on the account of the said (*as-
signor*) he the said (*assignor*) hath proposed and agreed to assign
and make over to him the said (*assignee*) the said debt aforesaid
proved by him against the estate of the said (*bankrupt*) and all
dividends which may be due or become payable on account
thereof upon the trusts and in manner hereinafter mentioned
Now this Indenture witnesseth That in consideration of the pre-
mises he the said (*assignor*) doth grant &c. unto the said (*assignee*)
his executors and administrators *All that* the said debt due and
owing to the said (*assignor*) from the said (*bankrupt*) and proved
by him under the adjudication of bankruptcy against the said
(*bankrupt*) as hereinbefore is mentioned and also all and every
dividend and dividends sum and sums of money which shall or
may be declared or become due and payable on account thereof

Recital of debt
due from as-
signor to as-
signee.

Debt due to
the assignor
from bankrupt.

Agreement to
assign debt and
dividends.

Testatum.

No.
CLXXVI.
*Debt and Divi-
dends.*

Habendum.

Power of at-
torney.

Declaration of
trusts.

respectively *And* all the estate right and interest of him the said (*assignor*) of in and to the same and every part thereof *And* all powers and remedies for the recovering and enforcing payment of the same *To have* receive and take the said debt or sum dividend or dividends hereinbefore expressed to be hereby assigned with all benefit and advantage thereof and all powers and remedies for recovering the same unto the said (*assignee*) his &c. as and for his and their own monies *Upon the trusts* nevertheless and for the purposes hereinafter expressed and declared of and concerning the same *And* for the better enabling him the said (*assignee*) his executors administrators and assigns to receive the said sum and sums of money hereinbefore expressed to be hereby assigned to the said (*assignee*) He the said (*assignor*) doth appoint the said (*assignee*) the true &c. attorney of him the said (*assignor*) to ask demand &c. the said debt or sum of £ and all dividends &c. *And* on receipt thereof to give receipts and acquittances or discharges for the same as the case shall require and to bring commence and prosecute any action suit or other proceeding whatsoever for recovering and compelling payment thereof *And* also to adjust settle compound and compromise all accounts and reckonings matters and things whatsoever relating to the said debt dividends and premises or any of them *And* for all or any of the purposes aforesaid to use the name of the said (*assignor*) and generally to do execute and perform any other act deed matter or thing whatsoever relating to the premises as fully to all intents as he the said (*assignor*) could do if personally present *And* whatsoever the said (*assignee*) shall lawfully do in or about the premises the said (*assignor*) doth hereby covenant and promise with and to the said (*assignee*) his executors &c. to allow ratify and confirm *And it is hereby declared* and agreed by and between the said parties hereto that the assignment hereby made of the said debt sum and sums of money dividend and dividends and the power hereinbefore given to the said (*assignee*) his executors administrators and assigns is so made and given to him and them *And* that he and they shall and will receive and stand possessed of all and every sum and sums of money which may become payable on account of the said debt or sum or the dividend or dividends thereof *Upon the trusts* and for the purposes hereinafter expressed and declared of and concerning the same (that is to say) *Upon trust* That he the said (*assignee*) his executors administrators and assigns do and shall thereout retain and reimburse himself or themselves all such costs charges and expenses

whatsoever as he or they shall or may from time to time be put unto or sustain in or about the execution of the trusts hereby reposed in him and then and also the said debt or sum of £ so as aforesaid now due and owing to him the said (*assignee*) from the said (*assignor*) Together with lawful interest for the same from the day of the date hereof And in the next place do and shall in like manner retain and reimburse himself and themselves the full amount of all costs payments charges and expenses which he the said (*assignee*) may from time to time be put unto or incur or which may become due and owing to him for any business to be done on account of the said (*assignor*) And when and as soon as all such sums of money shall have been fully paid off and discharged Then upon this further trust that the said (*assignee*) his executors &c. shall and will pay over to the said (*assignor*) his executors &c. the residue of the monies which shall hereafter be received by him by virtue of these presents In witness &c.

No.
CLXXVI.
Debt and Divi-
dends.

No. CLXXVII.

Assignment of Dower.

Obs. A woman, although legally entitled to her dower at common law, cannot enter upon her part until it has been regularly assigned to her by the sheriff under the queen's writ, or by the heir or the tenant of the freehold, Co. Lit. 34 b.

This Indenture &c. Between (*Heir*) of &c. heir at law of A. B. deceased of the one part and (*Dowress*) of &c. widow and relict of the said A. B. of the other part Whereas the said A. B. was at the time of his decease seised of an estate of inheritance in fee simple in possession of and in divers lands and tenements situate &c. which upon his decease descended unto the said (*H.*) subject to the dower of the said (*D.*) Now this *Indenture witnesseth* That upon the request of the said (*D.*) He the said (*H.*) Doth by these presents assign unto her the said (*D.*) one third part of the said lands and tenements to wit All that mesuage &c. To have and to hold unto the said (*D.*) for and during the natural life of the said (*D.*) in severalty by metes and bounds as for and in the name of dower and in full satisfaction of all claim which the said (*D.*) hath or ought to have of or in the said lands and tenements of which the said A. B. was seised in his

No.
CLXXVII.
Dower.

Recital of
seisin in fee
simple.

No.
CLXXVII.
Dower.

lifetime *And* the said (*D.*) doth hereby accept the said mes-
suage or tenement &c. so assigned as and for her dower and in
full satisfaction of the same *In witness* &c.



No.
CLXXVIII.
Executorship.

No. CLXXVIII.

*Assignment of an Executorship and Indemnity of the Executor
by a Mortgage.*

Obs. 1. An executorship, being an office of trust, is not assignable
(see Pref. sect. 5) otherwise than in the qualified manner of the fol-
lowing precedent, which has been taken with some variations from
Wood's Conveyancing.

2. As to the stamp, see Pref. sect. 9, p. 347.

Recital.

Payment of
debts and le-
gacies.

Agreement to
assign.

Testatum.

This Indenture made &c. Between (*Heir*) son and heir and also
residuary legatee under the will of A. B. late of &c. deceased of
the one part and (*Executor*) of &c. executor of the last will and
testament of the said A. B. *Whereas* the said A. B. did by his
last will and testament in writing bearing date &c. devise all his
messuages lands tenements and hereditaments and did bequeath
all his personal estate unto (*E.*) and E. F. (since deceased) their
heirs and assigns *In trust* by sale or mortgage or otherwise to
raise and pay his debts funeral expenses and legacies and made
the said (*H.*) his residuary legatee *And whereas* the said (*E.*)
hath by and with the privity and consent of the said (*H.*) paid
and discharged the funeral expenses and divers debts and lega-
cies of the said A. B. which are mentioned in the schedule here-
unto annexed and hath delivered all discharges and acquittances
which were made and given to him the said (*E.*) for the several
sums of money so paid as the said (*H.*) doth hereby acknow-
ledge *And whereas* it hath been agreed between the said (*H.*)
and the said (*E.*) that the said (*H.*) shall from henceforth take
upon him the payment of all such legacies and sums of money as
yet remain payable by force of the said last will and that the said
(*E.*) shall for that purpose assign unto the said (*H.*) all such
goods chattels and other things as the said (*E.*) hath or is en-
titled to as executor of the same will in such manner as is here-
inafter expressed *And* the said (*H.*) hath agreed to make such
lease and demise to the said (*E.*) as is hereinafter contained to
the intent thereby to indemnify him the said (*E.*) *Now this
Indenture witnesseth* That in consideration of the premises He

the said (*E.*) *Doth* grant &c. unto the said (*H.*) *All those* the said letters of administration and probate of the will of the said A. B. deceased and all the goods chattels debts securities for debts and other things which the said (*E.*) hath or is entitled unto as executor of the last will and testament of the said A. B. deceased the receipt of which said letters &c. the said (*H.*) doth hereby acknowledge *To have hold* receive and take the same and every of them and all the right title and interest of him the said (*E.*) therein and thereunto and all and singular other the premises hereby assigned unto the said (*H.*) his executors &c. in as large ample and beneficial a manner as he the said (*E.*) might have held received and taken the same by virtue of the said will *And* the said (*E.*) doth hereby give unto the said (*H.*) his executors &c. full power and authority in the name or names of the said (*E.*) his executors &c. but at the costs and charges of the said (*H.*) his executors &c. and to and for his and their own use and benefit to demand receive sue for and recover all debts and all other the sums of money due and owing to the estate of the said A. B. deceased and all and every the bonds mortgages securities terms interests and estates concerning or relating to the same which do or shall belong unto the said (*E.*) as executor of the said will of the said A. B. deceased *And* the said (*E.*) for himself &c. doth covenant &c. with the said (*H.*) his executors &c. that he the said (*E.*) his &c. hath not at any time heretofore made done or suffered and shall not nor will at any time or times hereafter make do or suffer any act matter or thing whereby any of the debts or sums now due and owing to the said A. B. deceased can or may be released discharged or otherwise *And also* that he shall and will at all times hereafter at the reasonable request costs and charges of the said (*H.*) do any further acts deeds matters and things for the further or better empowering and enabling the said (*H.*) his executors &c. in the name or names of the said (*E.*) his executors &c. to demand receive and recover all debts and sums of money due and owing to the estate of the said A. B. deceased *And* the said (*H.*) in consideration of the premises doth hereby acknowledge and declare that all the said (*E.*) hath done or acted in the execution of the last will and testament of the said A. B. deceased and as mentioned in the schedule hereunto annexed hath been with the privity consent and approbation of the said (*H.*) *And* the said (*H.*) doth hereby for himself his executors &c. covenant &c. with the said (*E.*) his executors &c. that he the said (*H.*) his heirs executors

No.
CLXXVIII.
Executorship.

Power of at-
torney.

No act to in-
cumber.

Further as-
surance.

Indemnity
from the heir.

No.
CLXXVIII.
Executorship.

Further testa-
tum.

Demise to exe-
cutor.

Proviso for
cesser of term.

Quiet enjoy-
ment until de-
fault.

&c. shall and will from time to time and at all times save harm-
less and keep indemnified the said (*E.*) his executors adminis-
trators and assigns and his and their lands and tenements goods
and chattels of and from all costs &c. which he or they shall or
may sustain &c. by reason of any action &c. and also for or by
reason of any default or failure of or in the performance of the
said last will and testament of the said A. B. deceased *And this*
Indenture further witnesseth That in further pursuance of &c. and
in consideration of &c. He &c. [*demise to executor, see Mortgage*
by Demise] Subject nevertheless to the proviso or condition here-
inafter mentioned (that is to say) *Provided always* and it is hereby
declared and agreed by and between the said parties hereto that
if the said (*H.*) shall and do well and truly perform all and every
the covenants and agreements herein contained on his and their
part to be done and performed according to the true intent and
meaning of these presents Then the said term of years of
and in the said messuages or tenements hereby demised shall at
the end of years next ensuing determine and be utterly
void to all intents and purposes anything in these presents in
any ways to the contrary notwithstanding *Provided also* That
in the meantime and until the said (*H.*) shall make default in the
performance of the covenants and agreements herein contained
by means or occasion whereof the said (*E.*) his executors admin-
istrators or assigns or any of them shall sustain or be put to
some trouble suit damage or expense it shall and may be lawful
for the said (*H.*) his heirs executors administrators and assigns
peaceably and quietly to have hold and enjoy the said messuages
or tenements &c. hereby demised or otherwise assured or in-
tended so to be &c. and to receive and take the rents &c. with-
out any let hindrance &c. of or by the said (*E.*) his heirs &c.
And the said (H.) for himself &c. [Covenants from the heir for
title.]



No. CLXXIX.

No. CLXXIX.
Furniture.

*Assignment of Household Furniture and Verbal Agreement for
a Lease.*

Recital of
tenancy.

This Indenture made &c. Between (*assignor*) of &c. of the one
part and (*assignee*) of &c. of the other part *Whereas* the said
(*assignor*) is in possession of a messuage or tenement situate &c.
as tenant to A. B. of &c. and C. D. of &c. under a yearly rent

of £ payable quarterly *And whereas* the said A. B. and C. D. have verbally agreed to grant a lease of the said messuage or tenement for 21 years from the day of determinable in the first 7 or 14 years at the option of the said (*assignor*) *And whereas* the said (*assignee*) hath contracted with the said (*assignor*) for the purchase of the household furniture now being in or upon the said messuage or tenement mentioned in the schedule or particular thereof hereunder written at or for the price of £ *Now this Indenture witnesseth* That for and in consideration of £ to the said (*assignor*) in &c. by the said (*assignee*) well &c. paid the receipt &c. He the said (*assignor*) *Doth* hereby bargain sell and assign unto the said (*assignee*) his executors and administrators *All* and singular the household furniture and things mentioned and specified in the said schedule or particular thereof hereunder written and also all the estate right title interest property claim and demand whatsoever of him the said (*assignor*) into or out of the said messuage or tenement and premises with the appurtenances *And* the full benefit and advantage to arise and accrue from the said promise or agreement made or entered into by the said A. B. and C. D. for such lease thereof as aforesaid or for any other lease *To have hold* receive take and enjoy the premises hereby assigned or intended so to be unto the said (*assignee*) his executors administrators and assigns for his and their use absolutely *In witness &c.*

No. CLXXIX.

Furniture.

Verbal agreement to grant lease.

Contract for purchase.

The schedule above referred to.

No. CLXXX.

Assignment by a Husband of Household Furniture, Books, Plate, Bills of Exchange, &c., to Trustees to sell for the Payment of Debts, and to stand possessed of Surplus for the separate Use of the Wife.

No. CLXXX.

Goods.

Obs. A settlement after marriage in favour of a wife and children, by a person not indebted at the time, and not being a trader, is good against subsequent creditors, *Lilly v. Osborn*, 3 P. Wms. 298; *Stephens v. Olive*, 2 B. C. C. 90; *Kidney v. Coussmaker*, 12 Ves. 155; *Battersbee v. Farrington*, 1 Swans. 106; and although a settlement after marriage is fraudulent against such persons as were creditors at the time the settlement was made, yet it is otherwise if

No. CLXXX. *Goods.* such settlement contains a provision for payment of debts, *George v. Millbank*, 9 Ves. 194. As to settlements by persons being insolvent within the bankrupt laws, see 12 & 13 Vict. c. 106, s. 126; Shelford on the Law of Bankruptcy, pp. 210—213, 2nd ed.

This Indenture made &c. Between (husband) of &c. and M. his wife of the first part and (trustees) trustees named for the purposes hereinafter mentioned of the second part Whereas the said (H.) is possessed of or entitled to divers books plate and household furniture and is also possessed of or entitled to the bills of exchange particularly mentioned in the first schedule hereunder written And whereas the said (H.) is desirous of making a provision as well for the payment of the debts now due and owing by him and mentioned in the second schedule hereto as for the said M. his wife in manner hereinafter mentioned And hath therefore proposed and agreed to assign and make over unto the said (T.) and the survivor of them and the executors &c. of such survivor all the said books plate household furniture bills of exchange and other particulars upon or for the intents and purposes hereinafter mentioned And whereas the said (H.) hath previously to the date and execution of these presents delivered unto the said (T.) the said books plate household furniture bills of exchange and other particulars Now this Indenture witnesseth That in pursuance of the said agreement he the said (H.) Doth assign unto the said (T.) their executors &c. All and singular the said books plate and household furniture of or to which he was possessed and entitled And also the said bills of exchange particularly mentioned in the said schedule hereunder written And all the right &c. of him the said (H.) of into and out of the same premises and every of them and every part thereof To have hold take and receive all and singular the premises hereinbefore assigned or intended so to be unto the said (T.) their executors administrators and assigns Upon trust that they the said (T.) and the survivor of them or the executors or administrators of such survivor their or his assigns do forthwith sell and convert into money the said books plate furniture and other particulars expressed to be hereby assigned and recover and receive the monies due and arising upon or payable by virtue of the said bills of exchange And do out of the monies received and to arise by such sale and conversion after deducting the costs charges and expenses of recovering and receiving the said monies pay and satisfy the debts and sums of money specified in the said second schedule hereto to the persons entitled to receive the same

Declaration of trusts.

And shall and do stand possessed of or interested in the surplus of the monies to be received from or on account of the said bills of exchange or to arise by such sale and conversion as aforesaid *In trust* for the sole and separate use of the said M. wife of the said (H.) independently of the said (H.) and not to be subject to his debts and engagements and to pay apply and dispose of such surplus monies to and for such intents and purposes as if the said M. were a *feme sole* and unmarried And the said (H.) for himself his heirs executors and administrators doth covenant &c. with the said (T.) their executors &c. that he the said (H.) shall and will from time to time and at all times hereafter make do and execute all such further and other lawful and reasonable acts deeds matters and things as shall be necessary for the further assuring and assigning the premises and for the more effectually enabling the said (T.) and the survivor of them &c. to recover and receive the monies due and payable upon or to arise by virtue of the said bills of exchange as by the said (*trustees*) &c. or his or their counsel in the law shall be advised or required *In witness &c.*

No. CLXXX.
Goods.

Covenant for
further as-
surance.

No. CLXXXI.

Assignment of Good-will of a Business.

No.
CLXXXI.
Good-will.

Obs. 1. The good-will of a trade is assignable, *Bunn v. Guy*, 4 East, 190; 1 P. Wms. 196. But the sale of a trade does not prevent the vendor from setting up a similar trade, unless there be an express stipulation to restrain him from so doing, *Shackle v. Baker*, 14 Ves. 468. A bond or promise to restrain oneself from trading in a particular place, if made upon a reasonable consideration, is good; but otherwise, if not made for a reasonable consideration; or if made to the restraint of trade altogether, *Mitchell v. Reynolds*, 1 Wms. 181. An agreement by an attorney to relinquish his business, and recommend his clients to another, and not to practise himself within certain limits, is valid in law. It is now established, that the good-will of a professional business is a subject of sale equally with the good-will of a trade, *Bunn v. Guy*, 4 East, 190; *Whittaker v. Howe*, 3 Beav. 383; *Nicholls v. Stretton*, 7 Beav. 42; *Swallow v. Wallingford*, 12 Jur. 403; *Bozon v. Farlow*, 1 Mer. 459. See *Austen v. Boys*, 24 Beav. 598; 4 Jur., N. S. 719; 27 L. J., Ch. 714, *ante*, p. 91; 1 Davidson's Conveyancing, pp. 476—480, n., 2nd ed.

2. Good-will is "property" within the meaning of the stamp laws, and is liable to *ad valorem* duty on conveyance, *Attorney-General v. Potter*, 18 Jur. 778; 10 Exch. 147; see 17 & 18 Vict. c. 83, s. 19.

No.
CLXXXI.
Good-will.

Recital of carrying on trade.
Contract for sale.

Covenants.

Not to carry on trade.

Further testimony.
Assignment of lease.

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* the said (*assignor*) hath for many years carried on the trade and business of in the house in which he now dwells and hath established a connexion in the said trade *And whereas* the said (*assignor*) hath agreed with the said (*assignee*) for the sale and relinquishment to him the said (*assignee*) of the said trade or business and also of the lease of the messuage or tenement where the said business is carried on at or for the price of £ to be paid as hereinafter mentioned *Now this Indenture witnesseth* That in consideration of the sum &c. to the said (*assignor*) in hand &c. paid by the said (*assignee*) &c. at &c. the receipt &c. He the said (*assignor*) *Doth* grant &c. unto the said (*assignee*) his executors &c. *All* and singular the good-will beneficial interest and advantage of the connexions and custom which he the said (*assignor*) now hath in the said trade or business *To have hold* receive and take the said good-will benefit profit and advantage to be made and obtained by and from the said trade or business *And* all the estate &c. *To have and to hold* the said premises hereby assigned or otherwise assured or intended so to be with their appurtenances unto the said (*assignee*) his &c. *And* the said (*assignor*) for himself &c. his heirs &c. doth hereby covenant &c. That he the said (*assignor*) shall not nor will at any time or times hereafter either solely or jointly with or as agent for any other person or persons directly or indirectly carry on or be engaged or concerned or interested in the said (*a*) trade or business of within miles of or any other trade or business connected therewith nor shall nor will at any time hereafter do or cause to be done any act matter or thing whereby or by reason or by means whereof the said (*assignee*) shall or may be injured or damnified in the said trade or business *And further* that the said (*assignor*) shall and will during the space of months next hereafter conduct and superintend the said trade &c. at the risk and for the sole benefit of the said (*assignee*) and use his best endeavours to promote the trade of the said (*assignee*) to the utmost of his power and also shall and will give his personal attendance in the shop (*or* counting-house) as often as occasion may require during the said period *And this Indenture further witnesseth* That in consideration of the premises &c. [see *Assignment of Lease*, *post*, pp. 389—392] *And it*

(a) See *ante*, *Obs.* 1, p. 379.

is hereby further declared and agreed by and between the said parties hereto that he the said (*assignor*) shall continue to reside in the said messuage or tenement hereby assigned or otherwise assured or intended so to be for the space of six calendar months to be computed from the date hereof without paying rent or taxes for the same unless the said (*assignee*) should by writing under his hand give the said (*assignor*) weeks' notice to quit the said messuage or tenement *And further* That the stock in trade and the fixtures on the said premises shall within the space of one calendar month from the date hereof be valued and appraised by two indifferent persons for that purpose to be chosen the one by the said (*assignor*) and the other by the said (*assignee*) and in case they cannot agree by a third person to be chosen by the two arbitrators *And* that he the said (*assignee*) shall from and immediately after such valuation (*a*) pay the amount thereof unto the said (*assignor*) his executors &c. *In witness &c.*

No.
CLXXXI.
Good-will.

Assignor to re-
side on the
premises for
six months.

Stock in trade
to be valued.

No. CLXXXII.

Assignment of the Good-will of a Business, and of Debts due on account thereof.

No.
CLXXXII.
Good-will.

This Indenture made &c. Between A. B. of &c. (*vendtor*) of the one part and C. D. of &c. (*purchaser*) of the other part *Whereas* the said A. B. hath for many years now last past carried on the trade or business of at and the same trade or business is now carried on by him at the same place *And whereas* the said A. B. is entitled to book and other debts due to him in respect of the said trade or business and also to divers goods wares stock in trade and other effects used in the said trade or business *And whereas* the particulars of the said book and other debts due to the said A. B. and also of the debts owing by the said A. B. are all entered in and appear by the books of account of the said A. B. *And whereas* the said A. B. hath contracted and agreed with the said C. D. for the sale to him of all his interest and good-will in the said trade or business

Recitals.

(a) Or, "give unto the said (*assignor*) his executors administrators or assigns a promissory note in writing under his hand for payment within calendar months to be computed from the date hereof of such sums as the said stock in trade and fixtures shall be valued at as aforesaid."

No.
CLXXXII.
Good-will.

Assignment of
good-will, &c.

Power of at-
torney.

and of the book and other debts owing to him the said A. B. on account thereof and all other the benefit and advantage thereof upon the terms hereinafter expressed *Now this Indenture witnesseth* That in consideration of the sum of £ of lawful money of Great Britain to the said A. B. paid by the said C. D. before the execution of these presents (*the receipt &c.*) and also in consideration of the covenants hereinafter contained on the part of the said C. D. he the said A. B. doth by these presents assign transfer and set over unto the said C. D. his executors administrators and assigns *All* that the interest and good-will of the said A. B. in the said business or trade of and also all and singular the book and other debts due and owing to the said A. B. in respect of the same business or trade and all and singular the securities for the said debts respectively or any of them and the full benefit of them and all and singular the contracts and engagements entered into and orders given to the said A. B. in respect of the same business or trade and the full benefit and profit arising from them and all and singular the goods wares merchandize stock in trade machinery and implements of manufacture and trade fixtures furniture articles effects matters and things belonging to the said A. B. in respect of the same business or trade or in anywise appertaining to the same business or trade or used for the purpose of carrying on the same *And* all the estate right title interest property possibility claim and demand whatsoever either at law or in equity of the said A. B. in to out of or upon the same premises and every of them and every part thereof *To have and to hold* all and singular the premises hereinbefore expressed to be hereby assigned unto the said C. D. his executors administrators and assigns for his and their own use and benefit *And* for the better and more effectually receiving and getting in the said several debts effects and premises and enforcing the said contracts and engagements and every or any of them the said A. B. *Doth* by these presents nominate constitute and appoint and in his place and stead put the said C. D. his executors and administrators to be his true and lawful attorney or attornies to ask demand sue for recover receive and give effectual discharges for the said debts and other the premises hereby assigned and every of them and every part thereof *And also* to adjust liquidate and settle all accounts transactions matters and things whatsoever relative to the premises and to compound compromise or submit to arbitration any such debt or debts as aforesaid due and owing to the said

A. B. or any claim or demand dispute or difference subsisting or to arise between the said A. B. and any other person or persons whomsoever in respect of the premises or any part thereof in such manner as to the said C. D. his executors or administrators shall seem fit and for the purposes aforesaid to enter into give sign execute or do all or any such bonds of arbitration releases discharges instruments in writing deeds and acts whatsoever as the said C. D. his executors or administrators shall think necessary and proper *And* for all or any of the purposes aforesaid to use the name of the said A. B. if the said C. D. his executors or administrators shall think fit and generally to execute perform and do any deed act matter or thing relative to the premises as fully to all intents and purposes as the said A. B. might or could have done in his own proper person in case these presents had not been executed *And* for better effecting the purposes aforesaid the said A. B. doth authorize the said C. D. his executors or administrators from time to time to substitute and appoint one or more person or persons in his or their place or stead with all or any of the powers and authorities and for all or any of the above mentioned intents and purposes which are hereby given to the said C. D. his executors and administrators and from time to time to revoke or vary any such last mentioned appointment and whatsoever the said C. D. his executors or administrators or the person or persons so to be substituted and appointed shall lawfully do or cause to be done in or about the premises the said A. B. *Doth hereby* for himself his heirs executors and administrators covenant with the said C. D. his executors administrators and assigns to allow ratify and confirm *And* the said A. B. doth hereby for himself his heirs executors and administrators covenant with the said C. D. his executors administrators and assigns that the said A. B. hath not at any time heretofore contracted any debt or debts or become bound bail or security or otherwise engaged or obliged to pay any debt or sum of money which can charge or affect the stock in trade goods debts effects and premises expressed to be hereby assigned or any part or parts thereof or for the recovery whereof the said C. D. his executors or administrators may be liable to be sued or prosecuted in any court of law or equity whatsoever except such debts as are entered and now appear to be due or owing in the said books kept by the said A. B. for that purpose and which have been delivered by him to the said C. D. *And* that all the debts which by the said books appear to

No.
CLXXXII.
Good-will.

Covenants by
vendor.

No.
CLXXXII.
Good-will.

be due and owing to the said A. B. as aforesaid are justly due to the said A. B. *And* that the said contracts and orders expressed to be hereby assigned are subsisting contracts and orders and in nowise vacated or countermanded *And* that the said A. B. hath not at any time heretofore assigned released discharged or received any of the said debts effects and premises or done any other acts whereby or by reason or means whereof the same may be impeached charged or incumbered in anywise howsoever *And* that the said A. B. will do all such acts as are necessary for putting C. D. in possession of the good-will assigned to him by introducing him to the customers or connections in business of the said A. B. *And further* That the said A. B. his executors or administrators will not revoke any of the powers or authorities hereby given to the said C. D. his executors or administrators or his or their or any of their substitutes nor receive compound release or discharge any of the debts effects and premises expressed to be hereby assigned nor compound release avoid or become nonsuit in any action or suit to be brought commenced or prosecuted for or in respect of the same or any part thereof nor do commit or suffer any act default matter or thing whereby or by means or reason whereof the recovery of the same premises or any part thereof may be impeded delayed or prevented nor interfere nor intermeddle with the same premises further than as the said C. D. his executors administrators or assigns shall direct or require *And* that the said A. B. his executors or administrators shall and will from time to time and at all times hereafter on the request and at the costs and charges of the said C. D. his executors administrators or assigns *Do* make and execute all and every such further and other lawful acts deeds matters and things for the further better and more effectually enabling the said C. D. his executors administrators and assigns to recover receive and get in all or any of the same goods wares merchandize stock in trade debts effects and premises as by the person or persons making such request his her and their counsel in the law shall be reasonably devised advised and required *And this Indenture further witnesseth* That in consideration of the premises he the said C. D. *Doth* hereby for himself his heirs executors and administrators covenant with the said A. B. his executors and administrators that the said C. D. his executors or administrators shall and will well and truly with all convenient speed pay or cause to be paid all and every the debt and debts and sum and sums of money

Covenants by
purchaser.

appearing in the said books of account delivered by the said A. B. to the said C. D. to be due and owing from the said A. B. and shall and will at all times save defend and keep harmless and indemnified the said A. B. his heirs executors and administrators and his and their and every of their estates and effects from and against all costs charges losses damages and expenses which shall or may be sustained or incurred or become payable for or by reason or means of the nonpayment of the said debts or sums of money or any of them or any part thereof or for or by reason of any action suit proceeding claim or demand which shall or may be brought or prosecuted in the name of the said A. B. by virtue or under any power or authority hereby given to the said C. D. his executors and administrators or his or their or any of their substitutes *Provided always* That the said A. B. his executors or administrators shall not be entitled to require payment of the debts hereby covenanted to be paid by the said C. D. or of any such debts with all convenient speed as aforesaid so long as the said A. B. his heirs executors and administrators and his and their and every of their estates and effects are indemnified and saved harmless in pursuance of the said covenant lastly herein contained [*Covenant by A. B. not to carry on trade within a specified distance, see ante, p. 380.*] *In witness &c.*

No.
CLXXXII.
Good-will.

No. CLXXXIII.

Assignment of the Moiety of a Boarding School (by Indorsement on the Articles of Copartnership).

No.
CLXXXIII.
Good-will.

Obs. As to the stamp upon the assignment of a good-will, see *ante*, p. 379.

To all to whom these Presents shall come The within named (*assignor*) sendeth greeting *Whereas* the said (*assignor*) by virtue of the power given to her in and by the within written articles of copartnership hath contracted and agreed with (*assignee*) of &c. for the absolute sale to her of her share and interest in the boarding-school now carried on by the said (*assignor*) in copartnership with the within named I. II. under and subject to such conditions limitations and agreements as are in and by the within written articles expressed and contained *Now know ye* That in consideration of the sum of £ to the said (*assignor*)

No.
CLXXXIII.
Good-will.

well and truly paid the receipt &c. she the said (*assignor*) *Doth* sell and assign unto the said (*assignee*) *All that* moiety or one-half part of her the said (*assignor*) of and in the said boarding-school and of and in the said premises where the same is carried on and the furniture fixtures books and other materials relating to the said school and also of and in the within written articles of copartnership *And* all the estate right title interest property future emolument and advantage claim and demand whatsoever of her the said (*assignor*) of in or out of the same premises *To have and to hold* the said moiety or one-half part of and in the said boarding-school and all and singular other the premises hereby assigned or intended so to be and all future emolument and advantage to arise from the same in as full ample and beneficial a manner as she the said (*assignor*) might have enjoyed the same if these presents had not been made without any let suit &c. *And* that free &c. [see *Assignment of Annuity by Indorsement*, ante, p. 354] *In witness* &c.



No. CLXXXIV.

CLXXXIV.
Judgment.

Assignment of a Judgment recovered by a Verdict.

Obs. 1. As to judgments and other *choses in action*, see ASSIGNMENTS, Pref. sect. 2, p. 344.

Stamp.

2. A judgment debt has been held not to be property within the meaning of the 55 Geo. 3, and therefore an assignment of such a debt does not require an *ad valorem* stamp, but must have the ordinary deed stamp, *Warren v. Howe*, 3 D. & R. 494; 2 R. & Cr. 281. The 13 & 14 Vict. c. 97, does not appear to affect this decision. It is doubtful whether a judgment debt would not be deemed property within the stamp acts. See 1 & 2 Vict. c. 110, s. 13, *Caldwell v. Dawson*, 5 Exch. 1.

To all to whom these Presents shall come I (*assignor*) of &c. send greeting *Whereas* I (*assignor*) as of term last past recovered a judgment in her Majesty's Court of at Westminster against A. B. of &c. for the sum of £ *Now know ye* That I the said (*assignor*) for divers good causes and considerations me hereunto moving *Do* bargain sell and assign unto (*assignee*) of &c. his executors &c. as well the said judgment for the said sum of £ aforesaid as all benefit profit sum and sums of money and advantage whatsoever that now can or shall or

may hereafter be obtained by reason or means of the same or of any execution thereupon now had or to be had sued out executed or obtained and all the estate &c. which I the said (*assignor*) have or ought to have or claim in &c. *And further* I the said (*assignor*) do by these presents make &c. the said (*assignee*) &c. my attorney &c. for me and in my name to sue and prosecute the said execution upon the said judgment and upon composition made concerning the premises to acknowledge satisfaction or to make or give any other release or discharge for the same and to make and do all such other acts and things whatsoever as shall be requisite in and about the premises *And* I the said (*assignor*) for myself do hereby covenant with the said (*assignee*) in manner following (that is to say) That I the said (*assignor*) have never made or executed any release or other discharge of the said judgment or of any execution which hath been or shall thereupon be sued or executed neither will nor shall I the said (*assignor*) my executors or administrators at any time hereafter make or do any act or other thing whatsoever whereby the said judgment or any execution which hath been or shall at any time hereafter be thereupon be sued or executed by the said (*assignee*) and his assigns shall be in any manner defeated hindered disabled debarred or extinguished without the consent of the said (*assignee*) his executors administrators or assigns thereto first had in writing nor revoke invalidate or avoid any power or authority hereinbefore by me given to the said (*assignee*) without such consent as aforesaid *And further* that I the said (*assignor*) my executors and administrators shall at all times hereafter at the request costs and charges of the said (*assignee*) &c. maintain justify allow and confirm all such lawful actions suits processes executions and proceedings whatsoever as have been or shall hereafter be brought sued forth or prosecuted against the said A. B. his heirs executors or administrators or his their or any of their lands tenements goods or chattels upon or by reason of the said judgment *In witness &c.*

No.
CLXXXIV.
Judgment.

Power of attorney.

Covenants.

Judgment not satisfied.

Assignor will not release.

ASSIGNMENTS OF LEASES.

- | | |
|---|---|
| 1. <i>Assignment to be in Writing.</i> | 4. <i>Consideration.</i> |
| 2. <i>Assignee bound by the Covenants of the Lease.</i> | 5. <i>Covenants qualified in Assignments.</i> |
| 3. <i>Licence to assign.</i> | 6. <i>Ad valorem Stamp necessary.</i> |



Assignment to be in writing.

SECT. 1. By the 29 Car. 2, c. 3, no lease, estate or interest, either of freehold or for term of years, or any uncertain interest in land, shall be assigned, unless by deed or note in writing, signed by the party or his agent legally authorized.

Assignee bound by the covenants of the lease.

2. An assignee is bound, under the words "subject to the rents and covenants on the lessee's part to be paid, &c." to indemnify the assignor against the rent and covenants, although he be not required so to do by the agreement for the sale, *Pember v. Mathers*, 1 B. C. C. 52; *Staines v. Morris*, 1 Ves. & B. 8. As a lessee will, notwithstanding his assignment to another, continue liable under his covenant to pay the rent during the term, this provision is particularly necessary. If the assignor be himself an assignee, he is entitled to a covenant for indemnity against the payment of rent and performance of covenants from his assignee, although the latter may have no covenants for title, *Cockram v. Robinson*, 11 Sim. 378; *Moore v. Gregg*, 2 Phill. C. C. 717. The assignees of a bankrupt leaseholder are not entitled to an indemnity against rent and covenants, *Wilkins v. Fry*, 2 Mer. 244. Where it is of importance to save the expense of a counterpart, a deed of covenant, or a bond, may be taken from the assignee for performance of the covenants in the lease, or a proviso similar to that in leases may be added on breach of covenants, *Doe v. Bateman*, 2 B. & A. 168. (As to the liabilities of lessee and assignee, see further, LEASE, Pref. sect. 16.)

Licence to assign.

3. If the lessee is prevented from assigning without the licence of the lessor, it is incumbent on him as vendor, and not on the purchaser, to procure the licence, *Lloyd v. Crisp*, 5 Taunt. 249; *Mason v. Corder*, 7 Ib. 9. If the purchaser buy of one who has previously bought, but not taken a conveyance, he can call on the original vendor to convey to him, *Wood v. Griffith*, 1 Swanst. 54.

Consideration.

4. No consideration is necessary to support an assignment of a lease, the rents and covenants being sufficient.

Covenants qualified in assignments.

5. In an assignment of a lease the covenants must be qualified throughout, where it is intended to restrict them to the assignor's own acts. It has been held that a general covenant will not be restrained by a subsequent clause, *Gainsford v. Griffith*, 1 Saund. 59; *Barton v. Fitzgerald*, 15 E. 530.

6. For the amount of *ad valorem* duty on the assignment of a lease, see 13 & 14 Vict. c. 97, Sched. tit. Conveyance.

Of Lease.

Ad valorem
stamp neces-
sary.

No. CLXXXV.

No. CLXXXV.

Lease.

Assignment of a Lease with an Assignment of Fixtures and Policy of Insurance. (General Precedent.)

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* by indenture of lease bearing date on or about the day of and made between (*lessor*) of the one part and (*original lessee*) of the other part For the considerations therein expressed the said (*lessor*) did demise *All that* &c. with the appurtenances unto the said (*lessee*) his executors &c. from the day of last past for the term of years at and under the yearly rent covenants conditions and agreements in and by the said indenture of lease reserved and contained *And whereas* after divers mesne assignments and assurances in the law ultimately by an indenture of assignment bearing date &c. the said messuage and premises became vested in the said (*assignor*) for the residue of the said term which was then to come and unexpired *And whereas* the said (*assignee*) hath contracted with the said (*assignor*) for the sale to him of the said messuage and premises comprised in the said in part recited indenture of lease for the residue of the said term of years at or for the price of £ (a) *Now this Indenture witnesseth* That in consideration of the sum of £ of &c. to him the said (*assignor*) paid by the said (*assignee*) at or before the execution of these presents the receipt whereof he the said (*assignor*) doth hereby acknowledge and of and from the same doth acquit release and discharge the said (*assignee*) his executors administrators and assigns for ever He the said (*assignor*) doth (b) assign transfer and set over unto the said (*assignee*) his executors administrators and assigns *All that* the said messuage &c. and all and singular other the premises comprised in the said in part recited indenture of lease with their and every of their

Recital of lease.

Mesne assign-
ments.

Contract for
sale.

Testatum.

(a) Where the licence of the lessor must first be had, (see *supra*, sect. 3.) say, “*And whereas* the said (*assignor*) hath previous to the sealing and delivery of these presents applied to and procured the licence of the said (*lessor*) as by a memorandum indorsed upon the said indenture doth appear.”

(b) “In pursuance of such licence as aforesaid.”

No. CLXXXV.	appurtenances together with the said in part recited indenture of lease (a) <i>And</i> all the estate right title term and terms of years to come and unexpired trust property possession claim and demand whatsoever both at law and in equity of him the said
<i>Lease.</i>	
Habendum.	(assignor) of in to and out of the said messuage &c. <i>To have and to hold</i> the said messuage &c. and premises hereby assigned or intended so to be with their and every of their appurtenances unto the said (assignee) his executors administrators and assigns henceforth for and during all the rest and residue now to come and unexpired of the said term of years (b) subject to the rents covenants conditions and agreements in the said in part recited indenture of lease reserved and contained which on the tenant's
Covenants from the assignor.	or lessee's part ought to be paid observed and performed <i>And</i> the said (assignor) doth hereby for himself his heirs executors and administrators covenant with the said (assignee) his executors administrators and assigns in manner following (that is to say) That the rent covenants conditions and agreements in the said in part recited indenture of lease reserved and contained have been duly paid observed and performed up to the day of last past <i>And</i> (c) that for and notwithstanding any act matter or thing whatsoever by the said (assignor) made done or knowingly omitted or suffered to the contrary the said hereinbefore in part recited indenture of lease is at the time of the sealing and delivery of these presents a good valid and subsisting lease and demise in the law and not forfeited surrendered or become void and voidable <i>And</i> that for and notwithstanding any such act deed matter or thing as aforesaid he the said (assignor) now hath in himself good right full power and absolute authority to assign the said messuage and premises hereby assigned or intended so to be for and during all the residue and remainder of the said term of years in manner aforesaid and according to the true intent and meaning of these presents <i>And further</i> that it shall and may be lawful to and for the said (assignee) his executors administrators and assigns from time to time and at all times hereafter during the said term of years peaceably and quietly to enter have hold occupy possess and enjoy the same messuage and premises with their appur-
That lease is valid and subsisting.	
Assignor has good right to assign.	
For quiet enjoyment.	

(a) If the policy of insurance be assigned at the same time, say, "and the said policy of insurance."

(b) "Together with all benefit and advantage to accrue from the said policy of insurance."

(c) As to qualified covenants, see *Obs.* 5.

tenances and to receive and take the rents issues and profits thereof to and for his and their own use and benefit without any lawful let suit trouble denial eviction interruption claim or demand of or by him the said (*assignor*) his executors or administrators or any person or persons lawfully or equitably claiming or to claim by from under or in trust for him them or any of them And that free and clear and freely and clearly acquitted exonerated released and for ever discharged or otherwise by the said (*assignor*) his executors or administrators well and sufficiently saved defended and kept harmless and indemnified of from and against all and all manner of former and other estates titles troubles charges and incumbrances whatsoever either already or to be hereafter made done committed or suffered by the said (*assignor*) his executors or administrators or by any person or persons lawfully claiming or to claim by from under or in trust for him them or any of them save and except the rents covenants conditions and agreements in and by the said hereinbefore recited indenture of lease reserved and contained and which on the tenant or lessee's part are or ought to be paid observed and performed And further that the said (*assignor*) his executors and administrators and all other person or persons having or claiming or who shall or may have or claim any estate right title interest property or demand whatsoever either at law or in equity of in to or out of the said messuage or tenement and premises hereby assigned or intended so to be or any of them or any part thereof by from under or in trust for the said (*assignor*) his executors or administrators shall and will from time to time and at all times during the said term of years at the request and proper costs and charges of the said (*assignee*) his executors administrators and assigns make do and execute or cause to be made done or executed all and every such further and other lawful and reasonable acts assignments and assurances in the law whatsoever for the better more perfectly and absolutely assigning and assuring of the said messuage &c. for the remainder then to come and unexpired of the said term of years as by the said (*assignee*) his executors administrators or assigns or his or their counsel in the law shall be reasonably advised devised and required And the said (*assignee*) doth hereby for himself his heirs executors administrators and assigns covenant with the said (*assignor*) his executors and administrators that he the said (*assignee*) his heirs executors administrators and assigns shall and will from time to time and at all times here-

No. CLXXXV.

Lease.

Free from incumbrances.

Further assurance.

Covenants from the assignee :

No. CLXXXV. after during the said term of years granted by the said in
Lease. part recited indenture of lease well and truly pay or cause to be
to pay rent. paid the yearly rent in and by the same indenture of lease
reserved which henceforth shall grow due and payable in respect
of the said premises hereby assigned at such time and in such
manner as the same is thereby reserved and also shall and will
to keep the observe perform and keep all and singular the covenants con-
covenants. ditions and agreements in the said indenture of lease contained
and which henceforth on the tenant or lessee's part ought to be
Indemnity to paid observed performed and kept *And* shall and will from time
assignor. to time and at all times hereafter save defend keep harmless and
indemnified the said (*assignor*) his heirs executors administrators
and assigns and his and their lands and tenements goods and
chattels from and against the payment of the said rent and the
performance of the said covenants conditions and agreements
and from and against all and all manner of actions suits cause
and causes of action costs charges damages claims and demands
whatsoever for or on account of the same or in anywise relating
thereto (a) *In witness &c.*

(a) Where the fixtures are also to be assigned, this may be done by a
further testatum, as follows: "*Whereas* the several fixtures and other things
mentioned in the schedule hereunder written have been agreed to be taken
by the said (*assignee*) at the price or sum of £ *Now this Indenture*
further witnesseth That in consideration of the sum of £ to the said
(*assignor*) paid by the said (*assignee*) at or before the signing and sealing
these presents the receipt whereof he the said (*assignor*) doth hereby acknow-
Assignment of ledge &c. (see the first testatum) *He* the said (*assignor*) *Doth* assign all
fixtures. and singular the stoves grates ranges coppers shelves dressers goods chattels
matters and things whatsoever mentioned and set forth in the schedule here-
under written or hereunto annexed and every of them and every part and
parcel thereof *To have* &c. the said goods chattels &c. hereby assigned or
intended so to be unto the said (*assignor*) his executors administrators and
assigns as his and their own proper goods and effects absolutely and for ever."

Where a policy of insurance is to be assigned with a lease, then add, "*And*
whereas by a certain deed-poll in writing bearing date &c. and being or
purporting to be a policy of insurance under the hands and seals of the
Recital of in- directors of Company he the said (*assignor*) hath insured the said pre-
surance. mises against damages by fire for the sum of £ *And* it hath been agreed
that the same policy shall be assigned to the said (*assignee*) in manner here-
inafter mentioned *Now this Indenture further witnesseth* That &c. and in
consideration of the premises he the said (*assignor*) *Doth* assign &c. *All*
that deed-poll or policy of &c. *And* all the right &c. with full power &c.
[see *Assignment of a Debt, ante*, p. 368] *To have* &c. the said deed-poll
&c. and all and every sum or sums &c. and all and singular" &c. [see
Assignment of Policy of Insurance].

No. CLXXXVI.

Assignment of a Lease by Indorsement.

No.
CLXXXVI.
*Lease (by
Indorsement).*

Know all Men That (*assignor*) of &c. for and in consideration of the sum of &c. to him by (*assignee*) of &c. paid at or before &c. the receipt &c. *Doth* assign to the said (*assignee*) his executors &c. *All* and singular the premises comprised in the within written indenture and thereby demised to A. B. with their appurtenances together with the within written indenture of lease And all the estate &c. of him the said (*assignor*) of in or to the said premises or any part thereof by virtue of the said indenture of lease *To have* &c. the said messuage &c. and all and singular other the premises hereby assigned with their appurtenances unto the said (*assignee*) his executors &c. for and during all the residue and remainder yet to come &c. Subject and without prejudice to the rents covenants and conditions in and by the within written indenture of lease reserved and contained and which on the tenant's or lessee's part ought to be paid and performed [*add covenants from the Assignor and Assignee, as in last precedent.*]

No. CLXXXVII.

Assignment of a Lease by Indorsement by an Administrator with Consent of the Lessor.

No.
CLXXXVII.
*By Indorsement
by
Administrator.*

Know all Men by these Presents That (*administrator*) of &c. administrator of all and singular the goods chattels rights and credits of the within named (*intestate*) deceased and in consideration of the sum of £ of lawful money &c. to him paid by (*assignee*) of &c. at or before &c. the receipt &c. [see *General Precedent, ante*, p. 389] *Doth* by and with the consent of the within named (*lessor*) testified by his executing these presents assign transfer and set over unto the said (*assignee*) his executors administrators and assigns *All that* &c. and premises comprised in the within written indenture and thereby demised with their and every of their appurtenances together with the within written indenture of lease and all the estate right title and interest which he the said (*administrator*) as administrator of the said (*intestate*) as aforesaid or otherwise now hath or at any time hereafter shall or may have claim challenge or demand of in or to all or any of the said premises with their and every of their

No.
CLXXXVII.
*By Indorsement
by
Administrator.*

appurtenances by virtue of the within written indenture of lease or otherwise as the administrator of the said (*intestate*) *To have and to hold* the said messuage &c. and all and singular other the premises hereby assigned with their and every of their appurtenances unto the said (*assignee*) his executors administrators and assigns for and during all the rest residue and remainder yet to come and unexpired of the within mentioned term of years in as full ample and beneficial a manner to all intents and purposes whatsoever as he the said (*administrator*) as administrator might or could in any manner have held and enjoyed the same if these presents had not been made *Subject* to the payment of the yearly rent of £ in and by the within indenture of lease reserved and henceforth to become due and payable and to all and every the covenants conditions and agreements therein contained which on the tenant's part ought to be observed and performed *And* the said (*administrator*) for himself his heirs executors and administrators doth hereby covenant and declare to and with the said (*assignor*) his executors administrators and assigns that he the said (*administrator*) hath not at any time heretofore made done committed or executed or knowingly or willingly permitted or suffered or omitted any act deed matter or thing whatsoever whereby or by reason or means whereof the said messuages and premises hereby assigned or intended so to be are is can or shall be in any ways impeached charged affected or incumbered in title term estate or otherwise howsoever *And* the said (*administrator*) doth hereby further covenant &c. [*Covenant for further assurance, see ante, p. 391; Covenant by Assignee, see ante, pp. 391, 392.*] *In witness &c.*



No.
CLXXXVIII.

*Parts of
Leasehold
Premises.*

No. CLXXXVIII.

Assignment of certain Parts of Leasehold Premises (of which a Partition had been made) to one of the Parties entitled thereto in severalty, subject to a proportionate Part of reserved Rents, &c.

Obs. Where different parties occupy different portions of land under the same lease, and are all equally liable to the whole rent and the performance of the covenants in the lease, it is usual for them to enter into cross covenants to indemnify each other, which will accompany the deed, in which case it is like the following precedent, but the object may be effected in different ways, see further COVENANTS, LEASES.

This Indenture made &c. Between W. P. of &c. and others of the first part H. A. and others of the second part and I. R. of &c. of the third part Whereas by indenture of lease bearing date &c. and expressed to be made between I. D. of the first part and the said W. P. and others of the second part It is witnessed that for the considerations therein expressed the said I. D. did demise lease and to farm let unto the several persons parties thereto of the second part their executors and administrators All &c. To have and to hold the same unto the several persons parties thereto of the second part and their executors &c. from the day of then last past for the term of years and months wanting six days subject to the clear yearly rent of £ for the first three years of the said term and the clear yearly rent of £ for the remainder of the said term and to the observance and performance of the covenants and agreements therein contained and on the tenant and lessee's part to be paid observed and performed And whereas the said pieces and parcels of land mentioned and demised by the indenture hereinbefore recited were some time since divided into thirty-six lots which are laid down and delineated in the plan or ground plot thereof drawn in the margin of these presents and a messuage and dwelling-house and offices have been erected and built upon each of the lots in the said plan or ground-plot distinguished by the numbers And whereas the said pieces or parcels of land and the messuage &c. which have been so erected as aforesaid are now vested in the said W. P. &c. for the residue of the said term of Upon trust for the several persons parties hereto of the second part and the said I. R. as they the said W. P. &c. do hereby admit and acknowledge And whereas the several persons parties hereto of the second part and the said I. R. lately determined to make a partition of and to divide in severalty between themselves the said pieces &c. and the said messuages so erected and built as aforesaid And whereas such partition or division hath accordingly been made by and between the said parties and it hath been agreed that the pieces &c. of land hereinafter described and also assigned or intended so to be with their appurtenances shall be taken and occupied by and assigned to the said I. R. as and for his part and share in severalty of and in all and singular the said premises subject nevertheless to the payment of £ as a proportionate part of the said rent of reserved by the said indenture of lease hereinbefore recited and to the observance and performance of

No.
CLXXXVIII.
*Parts of
Leasehold
Premises.*

Recital of lease.

Division of demised premises.

Agreement by parties of the second part so to make a partition.

Partition made.

No.
CLXXXVIII.
*Parts of
Leasehold
Premises.*

Testatum.

the covenants reserved and contained in and by the said indenture of lease and on the tenant's or lessee's part to be paid observed and performed *Now this Indenture witnesseth* That in pursuance of and for effectuating the said recited agreement they the said W. P. &c. according to their several and respective estates rights and interests in the premises but not further or otherwise and at the request and by the direction of the said several persons parties hereto of the second part testified by their severally executing these presents *Do* and each of them *doth* assign And the said several persons parties hereto of the second part according to their respective estates &c. *Do* and each of them *doth* assign and confirm unto the said I. R. his executors administrators and assigns *All those* several lots pieces or parcels of land and premises delineated on the said plan or ground plot drawn in the margin of these premises distinguished by the number with their and every of their rights members and appurtenances *And* all ways &c. *And* all the estate &c. *To have and to hold* the said lots &c. and all and singular other the premises hereby assigned or intended so to be and every part and parcel of the same with their appurtenances unto the said I. R. his executors administrators and assigns from henceforth for and during all the residue and remainder of the said term of &c. therein now to come and unexpired *Subject* nevertheless to the payment of the yearly rent of £ as a proportionate part of the said rent of £ reserved by the said indenture *And subject* also to the observance and performance of the covenants and agreements in the said indenture of lease contained and which on the tenant's or lessee's part are or ought to be from henceforth observed and performed *And* the said several persons and parties hereto of the first and second parts [*covenant that they have done no act to incumber, see ante, p. 394*] And the said I. R. *doth* hereby &c. [*covenant to pay proportion of rent and performance of the covenants, ante, pp. 391, 392*] *In witness &c.*

Habendum.

No.
CLXXXIX.
Money.

No. CLXXXIX.

Assignment of Monies by way of collateral Security.

This Indenture &c. Between (*assignor*) of &c. of the one part and (*assignees*) trustees under the marriage settlement of the said (*assignor*) of the other part *Whereas* by an indenture bearing Settlement of wife's property.

date &c. and made between the said (*assignor*) of the first part (*intended wife*) of &c. spinster of the second part and the said (*trustees*) of the third part being a settlement made previously to and in consideration of the marriage then intended and shortly afterwards solemnized between the said (*assignor*) and the said (*I. W.*) after reciting among other things that the said (*I. W.*) was possessed of or entitled to various outstanding debts due to her and also a tontine annuity &c. *It was witnessed* That the said (*I. W.*) with the privity of the said (*assignor*) assigned unto the said (*T.*) *All* and singular the debts &c. *To hold* the premises unto the said (*trustees*) their executors &c. *Upon trust* after the solemnization of the said marriage to pay the dividends &c. to such persons and in such manner as she the said (*I. W.*) should during her life notwithstanding her coverture direct or appoint and in default of appointment to pay the same into the hands of the said (*I. W.*) for her separate use during her life and after her decease *Upon trust* to pay all such dividends and interest to the said (*assignor*) during his life And after his decease *In trust* for the children of the said intended marriage in manner therein mentioned *And whereas* by an indenture bearing date &c. and made between (*grantor*) therein described of the first part the said (*assignor*) of the second part and the said (*T.*) of the third part In consideration of the sum of £ paid by the said (*T.*) to the said (*G.*) he the said (*G.*) granted unto the said (*assignor*) during the joint natural lives of the said (*G.*) and the said (*assignor*) and the life of the longest liver of them one annuity or clear yearly sum of £ chargeable upon all the messuages lands and hereditaments of him the said (*G.*) situate &c. Subject to redemption on payment of the sum of £ in manner therein mentioned which annuity was purchased by the said (*assignor*) with certain of the monies which by the said settlement were assigned to the said (*T.*) *And whereas* the said (*assignor*) by bond or &c. in writing bearing date &c. became bound to the said (*T.*) for the payment of £ lent to him by them by and out of the said trust estate and which said sum is still due and owing to the said (*T.*) by the said (*assignor*) *And whereas* the said M. (*assignor's wife*) departed this life leaving the said (*assignor*) her husband and two children namely E. G. of the age of &c. and W. G. of the age of &c. or thereabouts her surviving and upon the decease of the said (*wife*) the said (*assignor*) became entitled to receive for his life the said interest dividends &c. *And whereas* the said (*assignor*) hath received

No.
CLXXXIX.
Money.

Trusts of the
settlement.

Annuity pur-
chased out of
the trust estate.

Bond given by
the assignor.

Death of wife.

No.
CLXXXIX.
Money.

Warrant of at-
torney.

Covenant to
pay.

Trustees not to
be answerable.

Assignor not to
receive trust
estate.

from the said (*G.*) in redemption of his aforesaid annuity the said sum of £ for which the said (*assignor*) became accountable to the said (*T.*) as the trustees of the said settlement *And whereas* the said (*assignor*) hath agreed to secure the payment to the said (*T.*) of the said sum of £ *And* in part performance of his agreement hath by his warrant of attorney bearing date &c. authorized certain attornies of her Majesty's Court of at Westminster to confess judgment against him in or as of term last term next or some subsequent term at the suit of the said trustees for the sum of £ *Now this Indenture witnesseth* That in pursuance and further performance of the said agreement he the said (*assignor*) for himself his heirs &c. doth covenant with the said (*T.*) their executors &c. in manner following (that is to say) That he the said (*assignor*) will pay or cause to be paid unto the said (*T.*) or the survivor of them or the executors &c. of such survivor the said sum of £ at or upon the day of next without any deduction or abatement whatsoever *And* the said (*assignor*) doth hereby expressly direct authorize and empower the said (*T.*) or the survivor &c. to receive the said sums of £ and £ and also all interest dividends and annual or other proceeds of the before mentioned trust monies stocks funds and securities comprised in and subject to the trusts of the before recited indenture of settlement and to which he the said (*assignor*) is entitled for his life and from time to time when and as the same shall be received after full payment and discharge of all costs charges and expenses incurred and to be incurred in and about the execution of the aforesaid trusts to lay out or invest the residue thereof in the names of the said (*T.*) or the trustees or the trustee for the time being at interest until the same shall amount to the said sum of £ or so much thereof as he the said (*assignor*) shall contrary to his aforesaid covenant fail to make up and pay as hereinbefore mentioned *Provided* that nothing herein contained shall oblige or require the said (*T.*) their executors &c. to sue or even apply for the payment of the said sum of £ or any part thereof nor shall they the said (*T.*) or any or either of them be in anywise answerable for any more money or monies than they shall respectively actually receive *And* the said (*assignor*) for himself his executors and administrators doth hereby covenant with the said (*T.*) their executors administrators and assigns that he the said (*assignor*) shall not nor will at any time or times hereafter take receive release or discharge any part of the said trust monies and pre-

mises without the consent in writing of the said (T.) first had and obtained for that purpose *And* that he the said (*assignor*) shall and will from time to time and at all times make do and execute or cause to be made done and executed all and every such further and other lawful acts deeds assignments and assurances in the law whatsoever for the further better more perfectly and satisfactorily assuring the said sum or sums interest dividends and premises unto the said (T.) their executors administrators and assigns and for the further and more effectually enabling them to recover receive and dispose of the same *In trust* as aforesaid in such manner and form as by the said (T.) their executors administrators and assigns or their or any of their counsel in the law shall be reasonably devised advised or required *And further* that the said (*assignor*) his executors administrators and assigns shall and will from time to time and at all times hereafter well and sufficiently save defend keep harmless and indemnify them the said (T.) each and every of them and each and every of their executors administrators and assigns and their each and every of their goods chattels lands and tenements of from and against all costs losses damages and expenses which they or either of them shall or may suffer sustain or be put unto for or by reason or means of their or either of their acts in or about the execution of the trusts of the said in part recited indenture of settlement or of having permitted or suffered any part of the said trust estate to be received by the said (*assignor*) contrary to the strict meaning of the said trusts or of any sums of money being due or owing by him the said (*assignor*) to the said trust estate or otherwise in relation thereto or to the trusts created by the said in part recited indenture of settlement *And lastly* that he the said (*assignor*) his heirs executors or administrators shall and will within six months after each of the said two sons E. and W. of the said (*assignor*) shall attain his age of twenty-one procure from him and deliver to the said (T.) or the survivor of them or the executors or administrators of such survivor their or his assigns a full and complete release and indemnity in respect of the said trust premises and his claims under the said settlement *Provided* that nothing therein contained shall extend to injure or affect the interests of the said E. and W. or either of them in and to such parts of the said trust funds as shall then actually remain vested in the said (T.) or &c. *And further* it is hereby expressly declared and agreed by and between the said parties that they the said (T.) and

No.
CLXXXIX.
Money.

Indemnity to
trustees.

No.
CLXXXIX.
Money.

the survivor of them and the executors or administrators of such survivor their or his assigns shall and will stand possessed of and interested in the stocks and securities to be purchased with the said sum of £ hereinbefore covenanted to be paid by the said (*assignor*) as aforesaid or in default of such payment in the interest dividends and annual proceeds hereinbefore directed to be received upon such and the same trusts and subject to such and the same powers provisoes declarations and appointments as the same are or ought to be subject or liable to under or by virtue of the said in part recited indenture of settlement *In witness &c.*



No. CXC.
Money.

No. CXC. 7

Assignment of a Sum of Money by way of Security for the Payment of another Sum.

Recitals.

Testatum.

Habendum.

Proviso to
make assign-
ment void.

*This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Whereas by indenture &c. [recite settlement giving power of appointment to husband and wife] And whereas [recite appointment of &c. by the husband at his decease to the assignor his son] Now this Indenture witnesseth That in consideration of £ to the said (assignor) paid by the said (assignee) the receipt &c. He the said (assignor) Doth assign unto the said (assignee) his executors &c. All that the sum of £ so given and appointed unto the said (assignor) as hereinbefore mentioned and all the estate right title interest property possibility claim and demand whatsoever both at law and in equity or otherwise howsoever of him the said (assignor) of in to out of or upon the premises hereby assigned or any part thereof respectively with full power and authority to and for the said (assignee) his executors administrators and assigns &c. [see *Assignment of a Debt*, ante, p. 368] To have &c. the said sum of £ and all and singular other the premises hereby assigned unto the said (assignee) his executors administrators and assigns Subject nevertheless to the proviso or condition herein-after mentioned Provided always and it is hereby agreed and and declared that if the said (assignor) his executors or administrators do and shall on the day of next pay unto the said (assignee) his executors &c. the sum of £ with*

interest for the same in the meantime at the rate of £
 per cent. per annum without any deduction then the said (*as-*
signee) his executors administrators or assigns shall at any time
 thereafter upon the request and at the cost of the said (*assignor*)
 his executors administrators or assigns re-assign the said pre-
 mises hereby assigned or intended so to be unto the said (*as-*
signor) his executors administrators and assigns And the said
 (*assignor*) for himself his executors and administrators doth
 hereby covenant with the said (*assignee*) his executors adminis-
 trators and assigns in manner following (that is to say) That he
 the said (*assignor*) his executors or administrators shall and will
 pay unto the said (*assignee*) his executors administrators and
 assigns the said sum of £ with interest after the rate
 aforesaid at or before the end of twelve calendar months from
 the date hereof And also that he the said (*assignor*) hath not
 done &c. any act to incumber [see *ante*, p. 369] And that
 he now hath in himself good right and full power to assign
 the said sum and the premises hereby assigned or intended so
 to be unto the said (*assignee*) his executors administrators and
 assigns in manner aforesaid And further That he the said
 (*assignor*) his executors and administrators and all other persons
 claiming or to claim any right title or interest of and in the said
 sum of £ or any part thereof by from under or in trust
 for him the said (*assignor*) his executors and administrators shall
 and will at all times hereafter upon every request of the said
 (*assignee*) his executors administrators and assigns but at the
 costs and charges of the said (*assignor*) his executors and admin-
 istrators do make and execute all such further assignments and
 assurances for more perfectly and absolutely assigning and as-
 suring the said sum of £ unto the said (*assignee*) his ex-
 ecutors administrators and assigns as by him and them or his or
 their counsel in the law shall be advised and required *P ovided*
always and it is hereby declared and agreed that if default shall
 be made in payment of the said sum of £ and interest or
 any part thereof contrary to the proviso and covenant herein-
 before contained it shall be lawful for the said (*assignee*) his
 executors administrators or assigns after the expiration of twelve
 calendar months from the date hereof absolutely to sell and dis-
 pose of the said sum of £ and premises hereby assigned
 freed from the proviso for redemption hereinbefore contained
 and all other equity of redemption whatsoever by public auction
 or private contract altogether or in parcels subject to such con-

No. CXC.

Money.

Covenant to
pay.

No act to in-
cumber.
Good right to
assign.

Further as-
surance.

Power of sale.

No. CXC.

Money.

ditions and generally in such manner as he the said (*assignee*) his executors &c. shall think proper *And* to assign and assure the said sum and premises or any part or parts thereof when sold unto the purchaser or purchasers thereof as he or they shall appoint *And* to receive the purchase money for the same and thereout in the first place to pay the costs of such sale or sales and all other costs incident thereto and in the next place to satisfy the said sum of £ and interest hereby secured or such part thereof as shall then remain due *And lastly* after the payments aforesaid to pay over the ultimate residue to the said (*assignor*) his executors administrators or assigns *Provided also* and it is hereby further declared that any receipt or receipts which shall be given by the said (*assignee*) his executors administrators and assigns for any monies received under the power aforesaid shall be a legal and sufficient discharge or legal and sufficient discharges to the person or persons paying the same and fully release the said person or persons respectively from all obligation of seeing to the application of the said money and from all liability by reason of the misapplication or nonapplication thereof or any part thereof *And* that the purchaser or purchasers shall not be obliged to inquire whether default shall have been made in payment of the said sum of £ and interest or any part thereof contrary to the proviso or covenant hereinbefore contained *In witness &c.*

—◆—

Assignment of a Mortgage, see post, MORTGAGES.

—◆—

*Assignment of a Mortgage Term, and the Money due thereon,
subject to the Trust to be declared by a Marriage Settlement,
see post, SETTLEMENT.*

—◆—

No. CXCI.

Mortgage.

No. CXCI.

*Assignment of a Mortgage from the Executors of a Mortgagee
to a Person advancing the Money where the Mortgagor is not
a Party.*

Concurrence of
mortgagor why
necessary.

Obs. 1. An assignment of a mortgage is in reality the assignment of a debt, that debt being collaterally secured by a charge upon a real estate, *Matthews v. Walwyn*, 4 Ves. 118. A mortgagee may assign

without the mortgagor being a party, *Newport's Case*, Skinn. 483; but the safer course is, that the mortgagor should join in the transfer and acknowledge that the money is due. If an assignee pay arrears of interest it will not be considered principal, and bear interest, unless the mortgagor concur in the assignment, *Earl of Macclesfield v. Pitton*, 1 Vern. 169; *Smith v. Pemberton*, 1 Ch. Cas. 68; *Achenhurst v. James*, 3 Atk. 271.

No. CXCI.
Mortgage.

2. By the 13 & 14 Vict. c. 97, any transfer, assignment or disposition of any mortgage or other security, provided no further sum of money be added to the principal money or stock already secured, if such principal money or stock already secured shall not exceed 1,400*l.*, the same duty as on a mortgage for the total amount of such principal money or stock; and if such principal money or stock should exceed in value 1,400*l.*, then 1*l.* 15*s.*, and a further progressive duty.

This Indenture made &c. Between (*assignors*) executors of A. B. late of &c. deceased of the one part and (*assignee*) of &c. of the other part *Whereas* by an indenture bearing date the day of and made between (*mortgagor*) therein described of the one part and the said A. B. deceased of the other part *It is witnessed* That in consideration of the sum of £ to him the said (*mortgagor*) paid by the said A. B. he the said (*mortgagor*) did grant and demise unto the said A. B. his executors &c. (*inter alia*) All those the messuages &c. (*parcels*) *To hold* the same unto the said A. B. his executors administrators and assigns from the day of then last past for the term of years under the yearly rent of a peppercorn *Subject* nevertheless to a proviso therein contained for redemption upon payment by the said (*mortgagor*) to the said A. B. of the sum of £ and interest on the days and times and in manner therein mentioned *And whereas* [*recite bond given by mortgagor and testator's will appointing executors and probate thereof*] *And whereas* the said principal sum of £ is still due and owing unto them the said (*assignors*) as executors aforesaid upon or by virtue of the said recited securities with an arrear of interest amounting to the sum of £ *And whereas* the said executors having occasion for the said principal money and interest due to them as aforesaid the said (*assignee*) hath at their request agreed to pay them the sum of £ upon having an assignment of the said principal sum of £ and interest due and to grow due thereon and of the said mortgaged hereditaments in manner hereinafter mentioned *Now this Indenture witnesseseth* That in pursuance of the said agreement and in consideration of the sum of £ by

Mortgage
money still
unpaid.

Testatum.

No. CXCI.
Mortgage.

the said (*assignee*) to the said (*assignors*) as executors as aforesaid paid at or before the sealing and delivery of these presents in full of all principal money and interest now due and owing to them as executors as aforesaid upon or by virtue of the said securities the receipt whereof they the said (*assignors*) and each of them do and doth hereby acknowledge and of and from the same and every part thereof do and each of them doth hereby acquit release and discharge the said (*assignee*) his heirs executors administrators and assigns for ever They the said (*assignors*) do and each of them doth by these presents assign unto the said (*assignee*) his executors administrators and assigns all that the said sum of £ so due and owing to them as executors as aforesaid and secured by the hereinbefore in part recited indenture of demise and bond And all money now due or which from henceforth shall grow due by way of interest for or on account of the said principal sum of £ and the full benefit of the said recited bond and all other securities for the said sum of £ and interest And all the estate right title interest property claim and demand whatsoever of them the said (*assignors*) and each of them of into or out of the same premises and every part thereof [Together with full power and authority to ask demand sue for recover and receive and give effectual receipts and discharges for the said monies hereinbefore assigned or any part thereof in the names of the said (*assignors*) or any of them their or any of their executors or administrators] *To have hold* receive and take the said principal monies and interest and all and singular other the premises hereinbefore assigned unto the said (*assignee*) his executors administrators and assigns for his and their own use and benefit [*A power of attorney is frequently added in lieu of the above words, in brackets as follows*] And in consideration of the premises the said (*assignors*) do and each of them doth by these presents appoint the said (*assignee*) his executors administrators and assigns to be the attorney and attornies of the said (*assignors*) and each of them their and his executors and administrators to demand recover and receive the principal money and interest hereby assigned or intended so to be and to give receipts and other discharges for the same respectively And on nonpayment thereof or any part thereof respectively in their or his names or name but at the risk and cost of the said (*assignee*) his executors administrators or assigns to bring commence carry on and prosecute any action suit or other proceeding for compelling payment thereof and

Power of
attorney.

generally to execute and perform any other act deed or thing relative to the premises as fully as they the said (*assignors*) their executors or administrators might or could have done in their or his own persons or person in case these presents had not been executed and to appoint a substitute or substitutes for all or any of the purposes aforesaid And whatsoever the said (*assignee*) his executors or administrators or his or their substitute or substitutes shall lawfully do in the premises the said (*assignors*) do hereby for themselves respectively and their respective heirs executors and administrators and not one for the other of them or the heirs executors or administrators of the other of them severally covenant and agree with the said (*assignee*) his executors or administrators to allow and confirm *And this Indenture also witnesseth* That in further pursuance of the said agreement and for the considerations aforesaid they the said (*assignors*) do and each of them doth by these presents assign unto the said (*assignee*) his executors administrators and assigns all and singular the messuages lands tenements and hereditaments comprised in and demised by the said indenture of the day of as hereinbefore is mentioned with their rights easements and appurtenances And all the estate right title interest term of years property claim and demand whatsoever of them the said (*assignors*) or either of them of in to out of or upon the same premises or any part thereof *To have and to hold* the said messuages lands tenements hereditaments and premises hereby assigned or intended so to be unto the said (*assignee*) his executors administrators and assigns for all the residue now to come of the said term of years subject to such right and equity of redemption as is now subsisting in the same premises *And* each of them the said (*assignors*) separately and apart from each other and so far only as concerns his own acts deeds and defaults doth hereby for himself his heirs executors and administrators covenant with the said (*assignee*) his executors administrators and assigns that they the said (*assignors*) have not nor hath either of them at any time heretofore made done or executed or knowingly or willingly permitted or suffered or been parties or party or privy to any act deed or thing whereby or by reason or means whereof they are in anywise prevented or hindered from assigning the said sum of £ and the interest due and to become due thereon or any part thereof unto the said (*assignee*) his executors administrators and assigns in manner aforesaid or whereby or by reason or means whereof the said messuages and premises hereby assigned or intended so to be

No. CXCL.

Mortgage.

Covenant by assignor against incumbrances.

No. CXCI.

Mortgage.Covenant by
assignee to in-
demnify.

or any of them or part thereof are or is can shall or may be impeached charged affected or incumbered in title estate or otherwise howsoever [*When the preceding power of attorney is inserted, the following covenant is usually added*] And the said (*assignee*) doth hereby for himself his heirs executors and administrators covenant with the said (*assignors*) their executors and administrators That he the said (*assignee*) his heirs executors or administrators will at all times hereafter save harmless and keep indemnified the said (*assignors*) and each of them their and each of their executors and administrators and their and each of their lands and tenements goods and chattels from and against all and all manner of costs damages losses and expenses whatsoever which shall or may at any time hereafter be paid or sustained by them or either of them for or by reason of any action or actions or suit or suits which shall or may be brought or prosecuted in the names or name of the said (*assignors*) or either of them their or either of their executors or administrators under or by virtue of the power or authority hereinbefore contained in that behalf or in any manner relating thereto *In witness &c.*

ASSIGNMENTS OF PATENTS.

1. *Law of Patents.*2. *Covenants in Assignments.*3. *Stamp.*

Law of patents. SECT. 1. By the 21 Jac. 1, against monopolies, a power is reserved to the crown, in sect. 6, of granting a royal patent of privilege to the true and first inventor of any new manufacture for the sole working or making such manufacture for the space of fourteen years, by virtue whereof a property becomes vested in the patentee, which passes to his executors, and is assignable as any other personal chattel, except that, by one clause of the statute, no assignment of a patent can be made to more than five persons, which provision is now abolished, see 15 & 16 Vict. c. 83. See Coryton on Patents; 2 Davidson's Conv. pp. 117—127, 451—455, 2nd ed.

Covenants in
assignments.

2. In an assignment of this nature, the covenants must be so qualified by the usual words, "notwithstanding anything by him done to the contrary," as to restrict them to the acts of the assignor. This is of particular importance where the vendor is himself an assignee. It has been held, that a covenant in such an assignment for absolute

right to convey is not restrained by the other parts of the deed, *Hesse v. Stevenson*, 3 B. & P. 565. It is said that in ordinary practice the covenants in assignments of letters patent are usually absolute and not qualified, 2 Davidson's Conv. p. 455, 2nd ed. Patents.

3. As to the stamp, see *ante*, ASSIGNMENTS, Pref. sect. 9, *ante*, Stamp. p. 347.

No. CXCH.

Assignment of Shares in a Patent.

No. CXCH.

Patent.

This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Whereas by certain letters patent bearing date the &c. and duly enrolled in the High Court of Chancery (a) her present Majesty Did give and grant unto M. K. his executors administrators and assigns the sole privilege of making paper from straw &c. for the term of 14 years and for the respective places in the said letters patent with a prohibition to all persons whatsoever other than the said M. K. his agents and assigns to use the said invention And whereas by indenture bearing date the day of and made between the said M. K. of the one part and the said (assignor) of the other part For the consideration therein mentioned the said M. K. did grant unto the said (assignor) certain parts or shares of and in the said letters patent To hold to him the said (assignor) his executors &c. for and during the then residue of the said term of 14 years And whereas the said (assignee) hath contracted with the said (assignor) for the sale to him of the said shares in the said letters patent for the price or sum of £

Recital of letters patent.

Assignment to assignor.

Contract for sale to assignee.

Now this Indenture witnesseth That for and in consideration of the sum of £ of lawful money of Great Britain to the said (assignor) paid by the said (assignee) at &c. the receipt &c. He the said (assignor) Doth by these presents assign unto the said (assignee) All those the said parts or shares of and in the said letters patent And all the right title and interest of him the said (assignor) of in and to the said parts and shares of and in the said letters patent To have and to hold the said parts and shares of and in the said letters patent with all benefit and advantage to arise therefrom unto the said (assignee) his executors administrators and assigns in as full ample and beneficial a manner as he the said (assignor) by virtue of the said letters patent and the said

(a) Letters patent granted after the 1st October, 1852, do not require enrolment, see 15 & 16 Viet. c. 83, s. 27.

No. CXCII.	in part recited indenture of assignment might have had or held
<u>Patent.</u>	the same if these presents had not been made for and during all
Good right to assign shares.	the rest and residue of the said term of 14 years And the (<i>as-</i> <i>signor</i>) doth hereby for himself his heirs executors and admin- istrators covenant with the said (<i>assignee</i>) his executors admin- istrators and assigns in manner following (that is to say) That for and notwithstanding (<i>a</i>) any act matter or thing to the con- trary by him done or suffered he the said (<i>assignor</i>) now hath good right full power and absolute authority to assign and con- vey the said parts or shares of and in the said letters patent And that he hath not by any means directly or indi- rectly forfeited any right which he ever had or might have had to the said parts or shares And that he the said (<i>assignee</i>) his executors administrators and assigns shall and may by virtue of these presents have receive and take all the profits and advan- tages whatsoever that shall or may arise from the same parts or shares without any interruption claim or demand by or from the said (<i>assignor</i>) his executors administrators and assigns or any other persons claiming under or in trust for him or them And also that he the said (<i>assignor</i>) his executors and administrators and all other persons claiming any right or interest to or in the said parts or shares hereby assigned or intended so to be under or in trust for him or them shall at all times hereafter at the request costs and charges of the said (<i>assignee</i>) do make and execute all such acts deeds and assurances for more effectually assigning and as- suring the said parts or shares hereby assigned or intended so to be unto the said (<i>assignee</i>) his executors administrators and assigns as by him or them or his or their counsel in the law shall be reasonably devised advised or required In witness &c.
Quiet enjoy- ment.	
Further as- surance.	

ASSIGNMENT OF PEWS.

1. Right to Pews by Prescription
or Faculty.
2. How defended.

Right to pews
by prescription
or faculty.

SECT. 1. The right to sit in a particular pew in a church arises either from prescription, as appendant to a messuage, or from a faculty or grant from the ordinary, for he has the disposition of all pews which are not claimed by prescription, *Gibs. Cod.* 221. No title can

(a) See Sect. 2, p. 406.

Pews.

be good to a pew, either upon prescription or upon any new grant from the ordinary, to a man and his heirs, for the pew will always go with the house to him that inhabits it, 1 Burn's Ecc. Law, 360; *Stocks v. Booth*, 1 T. R. 432. By the general law of common right, all pews belong to the parishioners at large, but the distribution of seats among them rests with the ordinary, whose officers, the churchwardens, must place the parishioners according to their rank and station, but subject to the approbation of the ordinary. The incumbent has no authority in seating and arraying his parishioners, except as a member of the vestry, nor are the churchwardens bound to follow the directions of the vestry, *Pettman v. Bridger*, 1 Phill. 322. Persons having pews appurtenant to their houses cannot let them to non-resident persons, and thus by contract defeat the general right of the parish, *Walter v. Garner*, 1 Hagg. 317—319. See Shelford's Real Prop. Stat. pp. 107—112, 6th ed.

2. In an action against the ordinary, the plaintiff must allege and prove repairs of the pew. If any repairs have been required within memory, they must be proved to have been made at the expense of the party setting up a prescriptive right. Mere occupancy does not annex pews to particular houses, 1 Wils. 326. A possessory right is not good against the churchwardens and the ordinary, but is sufficient to maintain a suit against a mere disturber, *Pettman v. Bridger*, *ub. sup.*

How defended.

No. CXCHII.

Assignment of a Pew.

No. CXCHII.

Pews.

This Indenture &c. Between (Assignor) of &c. of the one part and (Assignee) of &c. of the other part Witnesseth That for and in consideration of the sum of £ to &c. by &c. He the said (assignor) doth by these presents assign unto the said (assignee) his executors &c. All that pew situate &c. and numbered as heretofore was occupied by the said (assignor) and his family And all the estate &c. To have &c. the said pew and all other the premises hereby assigned or intended so to be To the intent that the said (assignee) and his family shall and may from henceforth at all times hereafter peaceably and quietly enter into have use and occupy the said pew for all such uses and purposes as are customary in attending divine service And the said (assignor) doth for himself &c. covenant &c. that it shall and may be lawful for the said (assignee) peaceably and quietly to hold and enjoy the said pew hereby assigned or intended so to be without the

Testatum.

Habendum.

Covenants from assignor for quiet enjoyment, &c.

No. CXCIIL. let hindrance or disturbance of the said (*assignor*) or his family or
Pews. his or their heirs executors administrators or assigns or any person
or persons lawfully claiming or to claim the same or any sitting
therein by from or under them or any of them *And* for the better
securing to the said (*assignee*) the full and free benefit of the said
pew and premises he the said (*assignor*) Doth hereby make con-
stitute and appoint A. B. one of the proctors of the ecclesiastical
court at to appear for him the said (*assignor*) in the said
court or elsewhere on his behalf but at the costs and charges of
the said (*assignee*) to give and acknowledge his consent and
approbation and direction for confirming the said pew to the
aforesaid (*assignee*) and his family or otherwise according to the
practice of the said court he ratifying and confirming whatsoever
the said A. B. or other proctor of the said court shall as proctor
or attorney for the said (*assignor*) lawfully do or cause &c. in the
premises *And further* the said (*assignor*) promises declares and
agrees not to revoke annul or defeat these presents or any autho-
rity hereby given to the said proctor but from time to time to
confirm and establish the same *And* the said (*assignee*) doth
hereby for himself his executors &c. covenant &c. that he the
said (*assignee*) his executors &c. shall and will well and truly pay
all dues rates and contributions which may be hereafter lawfully
made and demanded for and concerning the said pew *And* do
and perform all needful repairs decorations and improvements
whatsoever at his own costs and charges, and wholly indemnify
the said (*assignor*) his heirs executors and administrators there-
from *In witness* &c.

Power of attor-
ney.

Not to revoke.

Covenant from
assignee to pay
dues, &c.

and indemnify
assignor.

ASSIGNMENTS OF POLICIES OF INSURANCE.

- | | |
|--------------------------------|---|
| 1. Policies assignable. | 4. Sums on Policies not apportion-
able. |
| 2. Life Insurance, what. | |
| 3. Life Insurances void, when. | |



Policies as-
signable.

SECT. 1. Policies of insurance, although choses in action, may be assigned at law as well as in equity, *Delany v. Stoddart*, 1 T. R. 26. Such assignments are for the most part inserted in other deeds; but where a policy is assigned by way of mortgage, and in some other cases, a separate deed is most convenient.

2. A policy for the insurance of a life is a contract to pay a certain sum in the event of death ; it is not a contract of indemnity as a policy of marine or fire insurance is, *Dalby v. India, &c. Assurance Company*, 15 C. B. 392 ; 4 De G. & S. 462, overruling *Godsall v. Boldero*, 9 East, 72. Of Policies.
Life insurance, what.

3. By the 14 Geo. 3, c. 48, any insurance made on the life or lives of any persons wherein the persons for whose use or on whose account the policy is effected shall have no interest, is void. Every man has an insurable interest in his own life, *Wainwright v. Bland*, 1 M. & Rob. 481, but to support an assurance on the life of another, the interest must be pecuniary as that of a creditor in the life of his debtor, *Von Lindenau v. Desborough*, 8 B. & C. 56 ; *Morland v. Isaac*, 20 Beav. 389, or that of a surety in the life of his principal, *Lea v. Hinton*, 19 Beav. 324. The assignee of a *chose in action* of a married woman has an insurable interest in her life, *Henson v. Blackwell*, 4 Hare, 442. And it has been held under the above statute, that a policy of insurance effected by a father on the life of his son is void, he having no pecuniary interest therein, *Halford v. Kynner*, 10 B. & C. 724. As to the insurance of the expectancy of an heir or next of kin of a party living, see *Lucena v. Crauford*, 2 B. & P. 324 ; *Cooke v. Field*, 19 L. J., Q. B. 441. Life insurances void, when.

4. Annual sums payable on any policy of insurance are not subject to the law of apportionment by 4 & 5 Will. 4, c. 32, s. 3. Sums on policies not apportionable.

No. CXCIV.

Assignment of a Policy of Insurance on a Ship by an Executor.

Obs. The 6 Geo. 1, c. 18, which limited the privilege of granting policies of insurance upon ships and goods to the Royal Exchange and London Assurances, is so far repealed by 5 Geo. 4, c. 114, as to make it lawful for other corporate bodies to make such policies.

To all &c. (assignor) of &c. executor of the last will and testament of A. B. deceased sendeth greeting Whereas the said A. B. by a certain writing or policy of insurance granted by the Insurance Company bearing date the &c. and numbered under the hands and seals of directors of the said company insured the sum of £ upon the ship or vessel for her voyage from A. to L. And whereas (assignee) of &c. hath agreed with the said (assignor) for an absolute assignment to him of the said policy of insurance for the sum of £ Now these presents witness That for and in consideration of &c. He the said (assignor) doth by these presents assign unto

No. CXCIV.

Policies of Insurance.

Recital of policy.

No. CXCIV. *Policies of Insurance.* the said (*assignee*) *All that* the said policy of insurance so effected by him the said A. B. deceased and all and every sum or sums of money recoverable or to be received upon or by virtue of the said policy and all benefit and advantage thereof And all the right title interest property claim and demand whatsoever of him the said (*assignor*) as executor as aforesaid together with full power and authority to ask &c. [see *Assignment of a Debt, ante*, p. 368] *To have* hold receive and take the said policy of insurance and all sums of money recoverable thereon and all and singular other the premises hereby assigned or intended so to be unto the said (*assignee*) his executors &c. in as full ample and beneficial a manner as he the said (*assignor*) might or could have done if these presents had not been made *And* the said (*assignor*) for himself &c. doth hereby covenant &c. with &c. the said (*assignee*) that he the said (*assignor*) hath done no act matter or thing whereby the said policy of insurance can shall or may be charged or incumbered in any way whatsoever *In witness* &c.

Habendum.

No act to incumber.



No. CXCIV. *Policy of Assurance.* *Assignment of a Policy of Assurance on a Life.*

This Indenture made &c. Between A. B. of &c. (*Vendor*) of the one part and C. D. of &c. (*Purchaser*) of the other part *Whereas* by an instrument or policy of assurance bearing date the day of and numbered under the hands and seals of the trustees or directors of the Life Assurance Company the sum of £ is assured to be paid out of the stocks or funds of the said company to the executors administrators or assigns of the said A. B. within six calendar months after proof of the death of the said A. B. according to the rules and practice of the said company at or under the annual premium of £ *And whereas* the said A. B. hath contracted for the sale of the said policy and all benefit to be derived therefrom to the said C. D. at or for the price or sum of £ *Now this Indenture witnesseth* That in consideration of the sum of £ of lawful money of Great Britain to the said A. B. paid by the said C. D. before the execution of these presents [*the receipt* &c.] He the said A. B. doth hereby assign transfer and set over unto the said C. D. his executors adminis-

Recital of policy.

Of contract for sale.

Assignment of policy.

trators and assigns *All* that the said policy hereinbefore particularly mentioned and all and every the bonuses and additions sums and sum of money to become payable or to be received under or by virtue of the same and the full benefit of the same and all the estate title interest property possibility claim and demand whatsoever of the said A. B. of in to out of or upon the same premises and every of them and every part thereof Together with full power and authority to ask demand sue for recover and receive and give effectual discharges for the said sums and sum of money and every part thereof in the name or names of the said A. B. his executors or administrators or otherwise *To have* hold receive and take the said policy monies and all other the premises hereby assigned or intended so to be unto the said C. D. his executors administrators and assigns absolutely for his and their own use *And* the said A. B. doth hereby for himself his heirs executors and administrators covenant with the said C. D. his executors administrators and assigns in manner following (that is to say) That for and notwithstanding any act default deed matter or thing whatsoever by the said A. B. done made executed committed or knowingly or wilfully suffered to the contrary the said policy of assurance now is a good valid and effectual policy for the sum of £ and in full force unsundered unforfeited and in nowise vitiated or become void or voidable *And* that the said A. B. now hath good right full power and lawful and absolute authority to assign the said policy sums of money and premises hereby expressed to be assigned unto the said C. D. his executors administrators and assigns in manner aforesaid *And* that the said A. B. will not at any time hereafter do commit or suffer any act default matter or thing whereby or by reason or means whereof the said policy shall or may be vitiated or become void or voidable or whereby or by reason or means whereof the said C. D. his executors administrators or assigns shall or may be hindered from recovering or receiving the money intended to be thereby assured or any part thereof *And* that the said A. B. his executors and administrators and all and every other person and persons whomsoever having or claiming or who shall or may have or claim any estate right title interest property claim or demand whatsoever either at law or in equity in to out of or upon the said policy monies and premises hereby expressed to be assigned or any of them or any part thereof by through under or in trust for him or them shall and will from time to time and at all times hereafter upon the request and at the costs and charges of the said C. D.

No. CXC.

Policy of Assurance.

Habendum.

Covenants by vendor.

That policy is valid.

Right to assign.

Not to avoid policy.

Further assurance.

No. CXCIV.
*Policy of
Assurance.*

his executors administrators or assigns make do and execute or cause and procure to be made done and executed all such further and other lawful acts deeds things devices assignments and assurances in the law whatsoever in order the further better and more absolutely to assign and assure the said policy monies and premises hereby expressed to be assigned and every part thereof unto the said C. D. his executors administrators or assigns and to enable the said C. D. his executors administrators and assigns to recover receive and obtain payment of the monies intended to be assured by the said policy as by the person or persons making such request his her or their counsel in the law shall be reasonably advised devised and required so that the person or persons required to make or execute any such assurance be not for that purpose compelled or compellable to go or travel from his her or their usual place or respective places of abode *In witness &c.*



Assignment of Policy of Insurance as a Security for Money,
see *post*, MORTGAGES.



Assignment of a Policy of Insurance to Trustees of Settlement,
see *post*, SETTLEMENTS.



ASSIGNMENTS OF REVERSIONARY INTERESTS.

- | | |
|--|--|
| <p>1. <i>Reversionary Interest, when assignable or otherwise.</i></p> <p>2. <i>Effect of Assignments by a Husband.</i></p> | <p>3. <i>The disposition by Married Women of Reversionary Interests in Personal Estate, authorized by Statute.</i></p> |
|--|--|



Reversionary
interests, when
assignable or
otherwise.

SECT. 1. Reversionary or expectant interests are not assignable at law, *Jones v. Roe*, 3 T. R. 88; 1 Fonbl. 217. And courts of equity will set aside assignments by expectant heirs, on the ground of inadequacy of consideration, 9 Ves. 246; 16 Ves. 512; 1 Fonbl. *ub. sup.*; *Fox v. Wright*, 6 Madd. 111. A voluntary assignment by deed of an equitable reversionary interest in personal property is valid, *Voyle v. Hughes*, 2 Sm. & G. 18; 18 Jur. 341; 23 L. J., Chan. 238. The assignment by deed of an equitable reversionary interest in per-

sonal property is not to be treated as a mere agreement, and although it be voluntary, is not an incomplete gift, but is a transfer of the beneficial interest of the assignor. *Ib.*

2. An assignment by a man of a contingent interest in right of his wife will not bind the wife, either at law or in equity, if she survive him before he has reduced it into possession, *Id. Carteret v. Paschall*, 3 P. Wms. 199; *Purdew v. Jackson*, 1 Russ. 1; *Honner v. Morton*, 3 Russ. 65. See 2 Davidson's Conv. pp. 111—115, 2nd ed.

3. After the thirty-first day of December, one thousand eight hundred and fifty-seven, it shall be lawful for every married woman by deed to dispose of every future or reversionary interest, whether vested or contingent, of such married woman, or her husband in her right, in any personal estate whatsoever to which she shall be entitled under any instrument made after the said thirty-first day of December, one thousand eight hundred and fifty-seven (except such a settlement as after mentioned), and also to release or extinguish any power which may be vested in or limited or reserved to her in regard to any such personal estate, as fully and effectually as she could do if she were a feme sole, and also to release and extinguish her right or equity to a settlement out of any personal estate to which she, or her husband in her right, may be entitled in possession under any such instrument as aforesaid, save and except that no such disposition, release, or extinguishment shall be valid unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as hereinafter directed: provided always, that nothing herein contained shall extend to any reversionary interest to which she shall become entitled by virtue of any deed, will, or instrument by which she shall be restrained from alienating or affecting the same. 20 & 21 Vict. c. 57, s. 1.

4. Every deed to be executed in England or Wales by a married woman for any of the purposes of this act, shall be acknowledged by her, and be otherwise perfected, in the manner by 3 & 4 Will. 4, c. 74, prescribed for the acknowledgment and perfecting of deeds, disposing of interests of married women in land; and every deed to be executed in Ireland by a married woman for any of the purposes of the act shall be acknowledged by her and be otherwise perfected in the manner, by 4 & 5 Will. 4, c. 92, prescribed for the acknowledgment and perfecting of deeds, disposing of interests of married women in land; and all and singular the clauses and provisions in the said acts concerning the disposition of lands by married women, including the provisions for dispensing with the concurrence of the husbands of married women, in the cases in the said acts mentioned, shall extend and be applicable to such interests in personal estate and to such powers as may be disposed of, released, or extinguished by virtue of this act, as fully and effectually as if such interests or powers were interests in or powers over land. *Ib.* sect. 2.

Reversionary Interests.

Effect of assignment by a husband.

Married women may dispose of reversionary interests in personal estate, and release powers over such estate, and also their rights to a settlement out of such estate in possession.

Deeds to be acknowledged by married women in the manner required by 3 & 4 Will. 4, c. 74, for disposing of interests in or powers over land in England or Wales; In Ireland, as by 4 & 5 Will. 4, c. 92.

*Reversionary
Interests.*

The powers of disposition given by this act not to interfere with any other powers.

Act not to extend to settlements of married women upon marriage.

Not to extend to Scotland.

5. Provided always, that the powers of disposition given to a married woman by the act shall not interfere with any power which independently of this act may be vested in or limited or reserved to her, so as to prevent her from exercising such power in any case, except so far as by any disposition made by her under this act she may be prevented from so doing, in consequence of such power having been suspended or extinguished by such disposition. *Ib.* sect. 3.

6. Provided always, that the powers of disposition hereby given to a married woman shall not enable her to dispose of any interest in personal estate settled upon her by any settlement or agreement for a settlement made on the occasion of her marriage. *Ib.* sect. 4.

7. The act does not extend to Scotland. *Ib.* sect. 5.



No. CXCVI.

No. CXCVI.

*Reversionary
Interest.**Assignment of Reversionary Interest of a Married Woman.*

This Indenture made &c. Between A. B. wife of C. D. of &c. (*Vendor*) of the first part the said C. D. of the second part and E. F. of &c. (*Purchaser*) of the third part *Whereas* the said A. B. is under and by virtue of the last will and testament of G. H. of &c. bearing date the day of entitled to the reversionary interest of and in the capital sum of £

Three per cent. Consolidated Bank Annuities expectant upon the decease of S. D. of &c. *And whereas* the said capital sum &c. now stands in the names of (*trustees*) in the books of the Governor and Company of the Bank of England *And whereas* the said A. B. with the concurrence of her said husband hath contracted with the said E. F. for the absolute sale of all her reversionary right title and interest of and in the capital sum of £

Three per cent. &c. expectant upon the decease of the said S. D. at or for the price or sum of £ *Now this Indenture witnesseth* That for and in consideration of the said sum of £ to the said C. D. and A. B. his wife by the said E. F. well &c. paid at &c. she the said A. B. with the concurrence of the said C. D. her husband testified by his executing these presents Doth by this deed intended to be acknowledged by her and to be otherwise perfected in the manner prescribed for the acknowledgment and perfecting of deeds disposing of interests of married women in land and in reversionary interests in personal estate assign and dispose of unto the said E. F. his executors admi-

nistrators and assigns *All* that the remainder or reversion of her the said A. B. expectant upon and to take effect immediately upon and after the decease of the said S. D. of and in all that capital sum of £ Three per cent. &c. now standing in the names of the said (T.) as aforesaid in the books of the Governor and Company of the Bank of England and all the interest dividends and annual proceeds thenceforth to grow due and payable thereon *And* of and in all and every the stocks funds and securities in or upon which the said sum of £ Three per cent. &c. shall or may hereafter be laid out or invested and the interest dividends and annual proceeds thereof *And* all the estate right title interest possibility claim and demand whatsoever both at law and in equity of the said A. B. and of the said C. D. in her right in to out of and upon the said premises or any part thereof Together with full power to ask demand sue for recover and receive and sign and give effectual receipts and discharges for the same and every part thereof in the name or names of the said A. B. and C. D. or either of them their or either of their executors or administrators *To have* hold receive and take the said sum of £ Three per cent. &c. and all other the premises hereby assigned and disposed of or intended so to be *Subject* to the estate for life of the said S. D. unto the said E. F. his executors administrators and assigns absolutely for his and their own use and benefit *And* the said C. D. doth hereby for himself his heirs executors and administrators covenant with the said E. F. his executors administrators and assigns That for and notwithstanding any act deed matter or thing by the said A. B. and C. D. or either of them done made committed or executed or knowingly or willingly suffered to the contrary she the said A. B. now hath in herself full power and authority to assign and dispose of the premises hereby assigned or intended so to be and every part thereof unto the said E. F. his executors administrators and assigns in manner aforesaid and that free and clear and discharged from or well and sufficiently indemnified against all former and other assignments charges and incumbrances executed or committed by the said A. B. and C. D. or either of them *And further* that the said A. B. and C. D. and each of them their and each of their executors and administrators and every other person having or claiming or who shall or may have or claim any right title or interest of in to or out of the said premises hereby assigned or intended so to be

No. CXCVI.
*Reversionary
Interest.*

Covenants by
husband.

Right to as-
sign.

Free from in-
cumbrances.

Further as-
surance.

No. CXCVI. *Reversionary Interest.* or any part thereof by from under or in trust for them the said A. B. and C. D. or either of them or their or either of their executors or administrators shall and will at all times hereafter at the request costs and charges of the said E. F. his executors administrators or assigns make do and execute or cause to be made done and executed all such further and other acts deeds acknowledgments and things whatsoever for the further and more effectually assigning and assuring the premises hereby assigned or intended so to be or any part thereof unto the said E. F. his executors administrators and assigns or for empowering and enabling him and them to recover and receive the said monies and premises as by him or them or his or their counsel in the law shall be reasonably devised advised and required *In witness &c.*



No. CXCVII.

No. CXCVII.

Shares.

Transfer of a Share in a Company.

Obs. By the Joint Stock Companies Act, 1856, the transfer of any share in the company shall be in the Form marked F. in the schedule thereto, or to the like effect, and shall be executed both by the transferor and transferee, the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof, 19 & 20 Vict. c. 47, s. 20.

See 19 & 20 Vict. c. 47, Sched. Form F.

I A. B. of in consideration of the sum of £ paid to me by C. D. of do hereby transfer to the said C. D. share [*or "shares"*] numbered in "The in the Company" standing in my name in the books of the company to hold unto the said C. D. his executors administrators and assigns [*or "successors and assigns"*] subject to the several conditions on which I held the same at the time of the execution hereof *And* I the said C. D. do hereby agree to take the said share [*or "shares"*] subject to the same conditions *As witness* our hands the day of .



As to Assignments of Shares in Joint-Stock Companies incorporated by Act of Parliament, see "The Companies Clauses Consolidation Act, 1845."

No. CXCVIII.

No. CXCVIII.

Assignment of Shares in a Copper Mine.

Shares.

This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Witnesseth That the said (assignor) for and in consideration of &c. Doth bargain sell and assign unto the said (assignee) All those two full sixty-fourth parts shares or doles [the whole into sixty-four equal parts shares or doles to be considered as divided] of and in that copper mine commonly called &c. of or to which the said (assignor) is possessed or entitled by virtue of an indenture of &c. Together with the like parts or shares of and in all copper copper ore lead tin tin ore and all or any other metals and minerals now or hereafter to be found broken or brought up to grass in upon or out of the said copper mine or adventure or any part thereof And also of and in all tackle tools whims engines stamps mills and implements of mining whatsoever And of and in all ways paths passages easements profits commodities advantages rights members and appurtenances And all the estate &c. To have &c. the said two &c. and all and singular other the premises hereby assigned or intended so to be unto the said (assignee) his executors administrators and assigns according to the custom of the stannaries of Cornwall from henceforth for and during all the residue of the term of years from the day of when the original grant was made from the lords of the soil subject to the payment of the proportionable part of the lord's and bounder's dues being one-twelfth part and also to two full sixty-fourth parts or shares of all costs and charges henceforth to accrue in working trying and prosecuting the said mine and premises and to the articles regulations and agreements in the said indenture contained or that hereafter may be made or entered into pursuant to the same for facilitating and prosecuting the said mine and the affairs thereof And the said (assignor) for himself his executors &c. doth hereby covenant &c. with the said (assignee) his executors administrators and assigns

Testatum.

Covenants.

No. CXCVIII. in manner following (that is to say) That he the said (*assignor*)
Shares. is lawfully possessed of or rightfully entitled unto the said two
 Lawfully pos- sixty-fourth parts &c. *And* that for and notwithstanding any
 sessed. thing to the contrary by him done he hath good right and full
 Good right to power to grant and assign the said two &c. *And* that it shall
 assign. and may be lawful to the said (*assignee*) his executors &c. from
 Quiet enjoy- henceforth peaceably and quietly to have and hold the same and
 ment. receive and take the dividends proceeds and profits thereof with-
 out the let &c. of the said (*assignor*) his &c. [see *Assignment of*
 Free from in- a *Lease*] subject as aforesaid *And* that the said two &c. parts &c.
 cumbrances. hereby assigned &c. now are free and clear and freely clearly
 and absolutely acquitted exonerated and discharged of from and
 against all and all manner of gifts grants bargains sales assign-
 ments leases mortgages charges and incumbrances whatsoever
 made &c. by the said (*assignor*) &c. *And* that the said (*as-*
 Further as- signor) and all and every other person claiming or to claim
 surance. under him shall and will from time to time and at all times here-
 after at the reasonable request &c. make do &c. [For further
assurance, see Assignment of a Lease]. *In witness* &c.

—♦—

No. CXCIX.

No. CXCIX.

Stock.

Assignment of Growing Crops for securing a Sum of Money.

Stamp.

Obs. An assignment of stock and crops in trust to sell, and with the proceeds to be produced by such sale to discharge debts due to the trustees and others, has been held to require, under the 55 Geo. 3, c. 184, not an *ad valorem*, but a common deed stamp only, *Coates v. Perry*, 6 Moore, 188; *S. C.* 3 B. & B. 48.

✱

Recital of debt.

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* the said (*assignor*) stands justly indebted to the said (*assignee*) in the sum of £ for money lent and advanced *And whereas* the said (*assignee*) hath commenced an action at law against the said (*assignor*) in her Majesty's Court of Common Pleas at Westminster and the said (*assignor*) hath been held to bail thereon *And whereas* the said (*assignor*) hath applied to the said (*assignee*) and requested him to suspend any further proceedings in the said action and hath proposed to confess the same by *cognovit* under his hand with liberty for the said (*assignee*) to enter up judgment thereon in case default shall be made in payment of

Agreement to
sign *cognovit*.

the said sum of £ contrary to the covenant hereinafter contained *And whereas* the said (*assignee*) having suspended all proceedings in the said action the said (*assignor*) hath signed a *cognovit* as hereinbefore proposed and for the better securing the payment of the said sum of £ hath also agreed to assign the several crops now growing on his farm in manner hereinafter mentioned *Now this Indenture witnesseth* That in consideration of the sum of £ so due and owing from the said (*assignor*) to the said (*assignee*) as aforesaid He the said (*assignor*) doth by these presents grant and assign unto the said (*assignee*) his executors administrators and assigns *All* and singular the crops of corn and grass now growing arising and being in and upon the farm situate lying and being in the parish of aforesaid and consisting of the following particulars (that is to say)

acres of wheat acres of barley acres of meadow
grass acres of beans and acres of oats and all other
crops now growing on the farm [*general description*] *And* all the right &c. of him the said (*assignor*) in to out of or upon the said crops of wheat and other crops and premises hereby assigned with full liberty for the said (*assignee*) his servants workmen and agents either with or without horses carts and carriages at all reasonable times hereafter as long as the said crops of wheat and other crops shall be growing standing or lying on the said several pieces of land to enter upon the same to see the state of such crops and for the purpose of cutting reaping and carrying away the same and for all necessary purposes *To have hold* receive and take all and singular the said crops and premises hereby assigned or intended so to be in as full large and ample a manner to all intents and purposes as if possession had been taken of the same by the course of law or as the said (*assignor*) might have held and enjoyed them if these presents had not been made *Upon trust (a)* nevertheless in case default

No. CXCIX.

Stock.

Testatum.

(a) If there be a trustee, and it be so agreed, say, "That he the said (*T.*) his executors administrators and assigns do and shall at any time hereafter upon the request of the said (*C.*) her executors administrators and assigns either absolutely sell and dispose of the said crops of corn hereinbefore assigned or intended so to be as the same are now growing to any person willing to become the purchaser thereof or do and shall permit the same crops to remain on the land until they are ripe and then do and shall cut reap and carry away and absolutely dispose of the said crops as he the said (*T.*) shall think fit with full power for him to purchase in the said growing crops at

No. CXCIX. <u>Stock.</u>	shall be made in payment of the said sum of £ on the day and in the manner as in the covenant hereinafter is mentioned and expressed that the said (<i>assignee</i>) his executors administrators and assigns do and shall sell the several crops hereby assigned <i>And</i> do and shall stand possessed of and interested in all sums of money to arise from such sale or sales
Declaration of trusts.	<i>Upon trust</i> in the first place to reimburse himself or themselves all costs and expenses which shall be incurred or which he or they shall pay sustain or be put unto in effecting the sale or sales as aforesaid <i>And</i> in the next place do and shall pay or reimburse himself (<i>a</i>) the said sum of £ with interest for the same as in the covenant hereinafter is mentioned and expressed <i>And</i> after payment thereof then in trust to pay and make over the residue and surplus [if any] unto the said (<i>assignor</i>) his executors administrators and assigns <i>And</i> it is hereby declared and agreed by and between the parties to these presents that for the purpose of carrying into execution the trust aforesaid it shall be lawful for the said (<i>assignee</i>) to make do and execute all such contracts agreements acts matters and things as shall be necessary without any further consent or concurrence of the said (<i>assignor</i>) <i>And</i> that the receipts of the said (<i>assignee</i>) his executors &c. for all or any sum and sums of money which shall be paid and payable for the said crops by virtue of these presents shall be valid and sufficient discharges to the person or persons paying the same <i>And further</i> it is hereby declared and agreed that no neglect or default shall be imputable to the said (<i>assignee</i>) his executors administrators or assigns for not proceeding to the sale of the said trust premises unless he or they shall be required so to do by some writing under the hand of the said (<i>assignor</i>) his executors &c. and that the said (<i>assignee</i>) his executors &c. shall not be answerable for any loss or damage which may happen to the said crops or the several pieces of land whereon they shall be growing unless occasioned by his or their wilful default and that he and they shall be respectively answerable for such sum or sums of money only as he or they shall actually receive
Indemnity to assignee.	
Contracts and receipts to be valid.	
Not answerable for losses.	

any public auction and to resell the same at any future auction or otherwise without liability for any loss to accrue thereby and do and shall stand and be possessed of &c." see above.

(*a*) If there be a trustee say, "In the next place do and shall pay the said (*C.*) her executors administrators and assigns the said sum of £ with interest &c." see above.

And the said (*assignor*) doth hereby for himself his heirs ex- No. CXCIX.
 ecutors and administrators covenant with the said (*assignee*) his Stock.
 executors administrators and assigns that he the said (*assignor*) Covenant for
 his heirs executors or administrators will on the day of payment.
 next pay to the said (*assignee*) his executors adminis-
 trators or assigns the sum of £ sterling with interest for
 the same in the meantime at the rate of £ per centum
 per annum without any deduction whatsoever *In witness &c.*

No. CC.

No. CC.
Terms.

*Assignment of Chattels real, to which a Person is entitled in
 Right of his Wife, in Trust to re-assign the same.*

Obs. 1. Terms for years and other chattels real, of which a wife is
 or may be possessed during her coverture, will survive to her, unless
 the husband exercise some act of ownership in his lifetime, as by
 assignment or otherwise. He cannot dispose of them by will until
 he has so done, as the will does not take effect until after his death,
 and the law vests the term in the wife immediately after the decease,
 Co. Litt. 351 b; Com. Dig. Baron and Feme, E. 2; 1 Rep. Hus.
 & W. 196.

2. As to the stamp on assignments, not charged as conveyances,
 see *ante*, ASSIGNMENTS, Pref. sect. 9, p. 347.

This Indenture &c. Between (*Husband*) of &c. of the one part
 and (*Trustee*) of &c. of the other part *Whereas* the said (*H.*) as
 husband of M. his wife formerly M. T. spinster is possessed of or
 entitled to divers messuages and for divers terms of years and is
 desirous of becoming the absolute owner of the same to the intent
 that he may have the right of settling and disposing of the same
 by will or in any other manner as he shall think fit *Now* for the
 purposes aforesaid He the said (*H.*) *Doth* by these presents as-
 sign unto the said (*T.*) his executors &c. *All those* the messuages
 or tenements and lands whatsoever of which he the said (*H.*) is
 possessed or in which he is interested in right of his wife or as
 her husband for any term of years or any other chattel interest
 whatsoever with their and every of their appurtenances And all
 the estate &c. of him the said (*H.*) *To have and to hold* the Habendum.
 said messuages &c. and all and singular other the premises
 hereby assigned and every part and parcel thereof with their
 appurtenances unto the said (*T.*) his executors administrators and

No. CC.
Terms.

assigns henceforth for the several residues and remainders of the several terms for years or other interests which the said (*H.*) hath in the said messuages respectively now to come and unexpired for and during all such times terms for years and other interests as the said (*H.*) now hath in the said messuages &c. respectively as fully and beneficially to all intents and purposes as the said (*H.*) can assign or otherwise assure the same *Nevertheless* upon trust that the said (*T.*) his executors administrators and assigns do and shall immediately after the execution of these presents re-assign the said premises hereby assigned or otherwise assured with their and every of their appurtenances and all his and their estate right title &c. unto the said (*H.*) his executors administrators and assigns for all the then residues and remainders of the several terms for years or other interests of the said (*T.*) his executors administrators and assigns therein *In witness* &c.



No. CCI.

No. CCI.

Re-assignment by Indorsement, in Pursuance of the foregoing Deed.

Know all Men by these Presents That in execution of the trust reposed in him the within named (*Trustee*) in and by the within written indenture He the said (*T.*) *Doth* by these presents assign unto the said (*H.*) his executors &c. *All* the messuages &c. whatsoever which by the within written indenture were and are assigned or otherwise assured by the said (*H.*) to the said (*T.*) or intended so to be and every part and parcel of the same with their and every of their appurtenances *And* also all the estate right title interest property power claim and demand whatsoever of him the said (*T.*) of in to upon and over the said message by force or virtue of the said within written indenture or otherwise howsoever Together with the same indenture *To have and to hold* the said messuages &c. and all and singular other the premises hereby assigned and every part &c. with their appurtenances unto the said (*H.*) his executors administrators and assigns henceforth for the several residues and remainders of the several terms for years and other interests which he the said (*T.*) hath in the said messuages respectively by virtue of the within written indenture and for and during all

such time or times &c. and other interests as the said (T.) now hath in the said messuages &c. respectively by virtue of the same indenture as fully and beneficially as the said (T.) can assign or otherwise assure the same *In witness &c.*

No. CCI.

Terms.

No. CCII.

No. CCII.

Assignment of a Wife's Term for Years by a Husband and a Wife to a Purchaser.

Obs. A man having an absolute right to dispose of a wife's term of years (see last *precedent*) may do so alone, but it is most usual to make the wife a party in an assignment to a purchaser.

This Indenture made &c. Between (*assignor*) of &c. and M. his wife [before marriage M. R. spinster] of the one part and (*assignee*) of &c. of the other part *Whereas* by an indenture bearing date &c. and made or expressed to be made between J. H. therein described of the one part and the said M. [then M. R. spinster] of the other part For the considerations therein mentioned the said J. H. did demise and lease unto the said M. R. her executors administrators and assigns *All that* messuage &c. with the appurtenances *To hold* the same unto the said M. R. her executors &c. from the day of last past for and during &c. from thence next ensuing and fully to be complete and ended subject to the rents covenants and agreements therein reserved and contained and on the lessee's part to be paid observed and performed *And whereas* the said (*assignor*) with the privity and approbation of the said M. his wife hath contracted and agreed with the said (*assignee*) for the absolute sale to him of the said messuage &c. for the residue &c. *Now this Indenture witnesseth* That in pursuance of &c. and in consideration of the sum of £ to the said (*assignor*) in hand &c. by the said (*assignee*) well &c. paid the receipt &c. He the said (*assignor*) with the privity of M. his wife testified &c. *Doth* by these presents assign unto the said (*assignee*) his &c. *All that* &c. [see *Assignment of a Lease*, ante, p. 389] And all the estate &c. *To have and to hold* the said messuage &c. unto the said (*assignee*) his &c. *And* the said (*assignor*) for himself &c. doth hereby covenant &c. in manner following (that is to say) That for and notwithstanding any act &c. by him the said (*assignor*) and M. his wife made &c. [*lease is good and subsisting*, see *Assignment of a Lease*, ante, p. 390] *And* that for and not-

Habendum.

Covenants.

A subsisting lease.

No. CCII.

Terms.

Good right to assign.

Quiet enjoyment.

Further assurance.

Covenant from assignee to indemnify assignor.

withstanding any such act deed matter or thing as aforesaid he the said (*assignor*) and M. his wife or one of them have or hath &c. in themselves himself or herself [*good right to assign &c. ante*, p. 390] And that it shall be lawful for the said (*assignee*) his &c. peaceably and quietly to have &c. without the lawful let suit &c. of or by him the said (*assignee*) and the said M. his wife or either of them their or either of their executors &c. And that free and clear and for ever discharged or otherwise by the said (*assignor*) his heirs executors or administrators well and sufficiently saved defended and kept harmless and indemnified of from and against all estates &c. whatsoever either already had &c. or hereafter to be had &c. by the said (*assignor*) and M. his wife or either of them their or either of their executors or administrators or by any person or persons lawfully or equitably claiming or to claim by from under or in trust for them or any of them And further that he the said (*assignor*) his executors &c. and all and every other person or persons having or claiming &c. by from under or in trust for him the said (*assignor*) and M. his wife or either of them their or either of their executors &c. shall and will make and do &c. [*acts for further assurance, ante*, p. 391] And also that he the said (*assignor*) his executors and administrators shall and will pay the rent reserved by the aforesaid in part recited indenture of lease up to and including Midsummer-day now next ensuing and shall and will save &c. the said (*assignor*) his executors administrators and assigns and his and their lands and tenements goods and chattels respectively from the same rent and from all costs and expenses on account of the breach or nonperformance of any of the covenants or agreements in the said in part recited indenture on the part of the said M. her executors administrators or assigns to be performed from the commencement thereof And the said (*assignee*) doth hereby for himself his executors &c. covenant &c. with the said (*assignor*) that he the said (*assignee*) shall and will &c. pay the yearly rent &c. and perform fulfil and keep all and every the covenants and agreements in the said &c. in part recited indenture of lease contained on the part of the tenant or lessee from henceforth to be performed and from the same rents covenants and agreements and all costs and expenses on account of any breach neglect or default of or in payment or performance thereof as aforesaid shall and will save harmless and keep indemnified the said (*assignor*) and M. his wife and each of them and each of their executors &c. [*ante*, p. 392] In witness &c.

ATTESTATIONS.

1. *Attestation, what.*| 2. *Attestation of wills.*

SECT. 1. An attestation of a deed is a memorandum by the witnesses who saw the same sealed and delivered, and who are to endorse or underwrite their names thereon. A deed sealed and delivered, it is said, may be good, for the seal is the essential part of the deed, 1 Inst. 7; 10 Co. 93. The attestation clause of the execution of powers of appointment should be worded with reference to the formalities prescribed by the power. It is necessary to insert the word "signed," if the appointment be required to be signed; see Sugd. Pow. 7th ed. pp. 286, *et seq.*; *Doe v. Burdett*, 4 Ad. & Ell. 1; 10 Cl. & Fin. 340; *Bartholomew v. Harris*, 15 Sim. 78; *Vincent v. Bishop of Sodor and Man*, 4 De G. & Sm. 294. It is not necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto, 17 & 18 Vict. c. 125, s. 26.

2. By the Statute of Frauds, 29 Car. 2, c. 3, all devises and bequests of any lands or tenements devisable by the Statute of Wills, or by any particular custom, were required to be signed by the party devising the same, or some other person in his presence, and by his express directions, and to be attested and subscribed in presence of the devisor, by three or four credible witnesses. By the 7 Will. 4 & 1 Vict. c. 26, ss. 5, 6, 19, 20, 21 and 22 of the above statute are repealed. By 7 Will. 4 & 1 Vict. c. 26, s. 9, no will of either real or personal estate is now valid unless it be in writing, and signed at the foot or end thereof by the testator or by some other person in his presence, and by his direction, and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses are to attest and shall subscribe the will in the presence of the testator, but no form of attestation is necessary. See 15 & 16 Vict. c. 24, which provides what signature to a will shall be deemed valid. If there be no attestation clause to a will, or an insufficient one, an affidavit is required before probate, from one of the subscribing witnesses, to prove compliance with the above statutes. See Form of Affidavit, No. XLI., *ante*, p. 67.

No. CCIII.

No. CCIII.
Deaf and Dumb. *Attestation of the Execution of a Deed by a Person Deaf and Dumb.*

The within written indenture was signed sealed and delivered [being first duly stamped] by the within named A. B. who being deaf and dumb but capable of reading the same was first read over by him and he seemed perfectly to understand the same in the presence of

C. D. of &c.

E. F. of &c.



No. CCIV.

No. CCIV.
Blind. *Attestation of the Execution of a Deed by a Blind Person.*

The within written indenture was signed sealed and delivered by the within named A. B. [having been first duly stamped] and he being blind the same indenture was carefully and audibly read over to him in the presence of

C. D. of &c.

E. F. of &c.



No. CCV.

No. CCV.
Attorney. *Attestation of the Execution of a Deed as the Attorney.*

Signed sealed and delivered by the within named C. D. as the attorney of the within named A. B. [being first duly stamped] in the presence of

E. F. of &c.

G. H. of &c.



No. CCVI.

No. CCVI.
Power of Attorney. *Attestation and Testimonium of a Deed executed under a Power of Attorney from Two.*

Signed sealed and delivered [being first duly stamped] by the within named A. B. as the attorney of the within named C. D. and E. F. and in the names and as the several acts and deeds of the said C. D. and E. F. in the presence of

G. H. of &c.

I. K. of &c.



No. CCVII.

The Testimonium.

No. CCVII.

Testimonium.

In witness whereof A. B. of &c. hath by virtue of a deed-poll or letter of attorney under the hands and seals of the said C. D. and E. F. bearing date the day of 18 and hereunto (a) annexed put the hands and seals of the said C. D. and E. F. the day and year first above written.

C. D. (*seal*) by A. B. his attorney.

E. F. (*seal*) by A. B. his attorney.

No. CCVIII.

No. CCVIII.

Testimonium in Lease executed by Committee on behalf of a Lunatic.

In witness whereof the said (*Committee*) by virtue of the said act of parliament and in obedience to the order of the said Lord Chancellor [*or* Lords Justices] bearing date the day of in the above written indenture severally referred to and recited hath to these presents as the committee of the estate of the said (*lunatic*) and in his place and on his behalf subscribed the name and set the seal of the said (*lunatic*) [and the other above named parties to these presents except the said (*lunatic*) have hereunto set their hands and seals] on the day and year first above written.

Attestation.

Signed sealed and delivered by the within named (*committee*) as the committee and in the name and on behalf of the within named (*lunatic*) in the presence of &c.

No. CCIX.

No. CCIX.

*Attestations where there happen to be Interlineations, &c.**Interlineations.*

Signed sealed and delivered [being first duly stamped] by the within named A. B. the words [*copy the words*] having been

(a) If the letter of attorney concern other property, a true copy of the same should be annexed.

No. CCIX. previously interlined in the fourth and fifth lines of the first skin
Interlineations. [or “written over obliterations between” &c. *as the case may be*]
 in the presence of &c.

No. CCX.

No. CCX.
As Attorney. *Attestation of a Deed executed by one Party in his own Right
 and as the Act of another of the Parties by Virtue of a
 Power.*

Signed sealed and delivered [being first duly stamped] by the
 above named [or “within written”] A. B. with his own name
 and as his own act and deed and afterwards as the attorney and
 in the name and as the act and deed of the within named C. D.
 by virtue of the authority given to him the said A. B. for that
 purpose by the indenture of assignment from the said C. D. to
 him the said A. B. and which is recited in this instrument in the
 presence of &c.

No. CCXI.

No. CCXI.
Will. *Attestation of a Will.*

Signed and acknowledged by the said testator as and for his
 last will and testament in the presence of us present at the same
 time who in his presence and at his request and in the presence
 of each other have hereunto subscribed our names to each sheet
 as witnesses thereto [*and if there are two parts say, “as we
 have also done to each sheet of another part of his will at the
 same time,” see ante, p. 427.*]

No. CCXII.

No. CCXII.
Testimonium. *Testimonium of a Will.*

In witness whereof I the said A. B. the testator have to this
 my last will and testament contained in sheets of paper
 set my hand the day of in the year of our Lord
 18 .

No. CCXIII.

Attestation of Warrant of Attorney.

No. CCXIII.
*Warrant of
Attorney.*

See 1 & 2 Viet. c. 110, s. 9.

The above written warrant of attorney to confess judgment was signed sealed and delivered by the above named A. B. in the presence of me of &c. one of the attornies of the court of at Westminster And I hereby declare myself to be the attorney for and on the behalf of the said A. B. expressly named by him and attending at his request and that I informed the said A. B. of the nature and effect of the above written warrant of attorney before the same was executed And I also declare that I subscribe my name as such attorney.

ATTORNMENTS.

- | | | |
|--|--|-------------------------------------|
| 1. <i>Definition of an Attornment.</i> | | 3. <i>Stamp Duty on Attornment.</i> |
| 2. <i>Object of an Attornment.</i> | | |

SECT. 1. Attornment is, properly, the acknowledgment by the tenant of a new lord, or the agreement of the tenant to the grant of the seignory of a rent, or of a reversion and remainder, see Co. Litt. 309 a. Butl. n. Since the 4 & 5 Ann. c. 16, and 11 Geo. 2, c. 19, an attornment is no longer necessary to the validity of a grant, and is therefore seldom made, except occasionally to mortgagees where the mortgagor is in the actual possession of the mortgaged property or a material part of it. See Jarm. Conv. by Sweet, pp. 35—49.

2. The object of an attornment is to enable the mortgagee to treat the mortgagor as his tenant, and to distrain for interest as rent. See *Pinhorn v. Souter*, 8 Exch. 763; *Walker v. Giles*, 6 C. B. 662; *Doe v. Cox*, 11 Q. B. 122; *Doe v. Torn*, 4 Q. B. 615; *West v. Fritche*, 3 Exch. 216. An express power to distrain for the interest of the mortgage debt is sometimes given by way of covenant from the mortgagor with the mortgagee, see *Doe v. Olley*, 12 Ad. & Ell. 481; *Doe v. Goodier*, 10 Q. B. 957; but it seems that such a covenant will only bind the mortgagor's goods on the land, and not those of a third party, *Freeman v. Edwards*, 2 Exch. 732; *Jolly v. Arbutnot*, 5 Jur., N. S. 80. As to the effect of an attornment by a tenant to a receiver appointed by the Court of Chancery, see *Evans v. Matthias*, 3 Jur., N. S. 793; 26 L. J., Q. B. 309.

Attorments.

An attornment is, in some cases, made by tenants to the party who has recovered the lands by judgment in an ejectment, see 2 Jarm. Conv. by Sweet, p. 50.

Stamp duty on
attornment.

3. A mere attornment, not containing an agreement to pay such rent as shall be agreed upon, requires no stamp, *Cornish v. Searell*, 8 B. & C. 47. A doubt has been suggested whether the insertion of an attornment clause in a mortgage may not subject the instrument to a lease stamp, 5 Sweet, Jarm. Conv. p. 515; but, according to the opinion of another learned author, an attornment is an integral part of the mortgage, and cannot have the suggested effect, 2 Davidson's Conv. p. 568, 2nd ed.



No. CCXIV.

No. CCXIV.

Attornment by a Mortgagor to the Mortgagee in a Mortgage in Fee.

And this Indenture further witnesseth That for the considerations aforesaid the said (*mortgagor*) *Doth* hereby attorn and become tenant from year to year to the said (*mortgagee*) his heirs and assigns for and in respect of the said premises now held and occupied by the said (*mortgagor*) at or under the yearly rent of £ free from all deductions to be paid by half-yearly payments on the day of and the day of in every year *And* the first half-yearly payment thereof to be made on the day of now next ensuing which said yearly rent is to be applied upon and for the trusts intents and purposes hereinbefore expressed and declared *And* in testimony of such attornment the sum of five shillings has been paid to the said (*mortgagor*) by the said (*mortgagee*) *Provided always* and it is hereby agreed and declared that if the said (*mortgagor*) his heirs executors administrators or assigns shall make default in payment of the said sum of £ or the interest thereof or any part thereof respectively on or at the days or times hereinbefore mentioned and appointed for the payment thereof respectively then and at any time thereafter it shall be lawful for the said (*mortgagee*) his heirs and assigns upon giving to the said (*mortgagor*) his heirs executors administrators or assigns or leaving on the premises fourteen days' previous notice in writing to enter into and upon and take possession of the said hereditaments and premises whereof the said attornment has been so made as aforesaid and to determine and put an end to the tenancy created by the aforesaid attornment.

AUCTIONS.

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| <ol style="list-style-type: none"> 1. <i>What constitutes an Auction.</i> 2. <i>Sales by Auction within the Statute of Frauds.</i> 3. <i>Licence to sell by Auction.</i> 4. <i>Particulars and Conditions of Sale.</i> 5. <i>Conduct of the Sale.</i>
<i>Auctioneer Agent for both Parties.</i>
<i>Auctioneer an Agent without written Authority.</i>
<i>Implied Authority.</i>
<i>Auctioneer must not exceed his Authority.</i> 6. <i>Biddings at the Sale.</i>
<i>Biddings by competent Persons.</i>
<i>Private Biddings how far admissible, or otherwise.</i> | <ol style="list-style-type: none"> 7. <i>Deposit Part of Purchase Money.</i>
<i>Payment of Deposit to Auctioneer.</i>
<i>Interpleader Bill by Auctioneer.</i>
<i>Relief under Interpleader Act.</i>
<i>Effect of Auctioneer's Insolvency.</i>
<i>Investment of the Deposit.</i> 8. <i>Auctioneer's Liability as to Charge of Goods.</i>
<i>Proceeds of Sale.</i> 9. <i>Remuneration of Auctioneer.</i> 10. <i>Validity of the Contract.</i>
<i>Particulars and Conditions of Sale.</i>
<i>Biddings at the Sale.</i>
<i>Provisions of the Statute of Frauds.</i>
<i>Signing the Contract.</i>
<i>Contract entire or otherwise.</i> |
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SECT. 1. An auction is a sale by competition, where the highest bidder is the purchaser, but to constitute a sale by auction it is not necessary that it should be conducted in any particular manner. The words of the 19 Geo. 3, c. 56, s. 3, are "by outcry, knocking down of hammer, by candle, by lot, by parcel, or by any other mode of sale at auction, or whereby the highest bidder is deemed to be the purchaser," and therefore a sale in a private room, where several persons were present, and a bargain was struck with one who offered the most, was held to be a sale within the auction laws, *Walker v. Advocate-General*, 1 Dow. 114; and anything in the nature of a bidding is within the act, as candlestick biddings, *R. v. Taylor*, 13 Price, 636; *S. C. M'Clell*, 362; dumb biddings and the like, *Cruso v. Crisp*, 3 East, 340; but it appears that where property is put up to sale, and there is no person that bids, this will not be deemed an auction within the act, the bare proposal of a sum by an agent for the owner not being held to be a bidding, *Ib.*, and see *Capp v. Topham*, 6 East, 392; *S. C. 2 Smith*, 443.

The law of auctions is affected not only by the revenue laws, but also by the general law regulating the transfer of property real and personal. In this twofold point of view it embraces various matters

What constitutes an auction.

What comprehended under the law of auctions.

<u>Auctions.</u>	as regards the Statute of Frauds, the licence to sell by auction, the conditions of sale, the conduct of the sale, the biddings at the sale and the deposit.
Sales by auction within the Statute of Frauds.	2. It was for some time a matter of question, whether sales by auction were within the Statute of Frauds. In one case it was expressly decided that they were not, <i>Simon v. Motivos</i> , 3 Burr. 1921; but that case has been overruled by a variety of subsequent decisions, and it is now settled that the provisions of that act must be complied with in sales by auction, whether of real or personal estate, in the same manner as in sales by private contract.
Licence to sell by auction.	3. No one can sell anything by auction without taking out an excise licence. The enactments regulating the licence are contained in the 19 Geo. 3, c. 56; 43 Geo. 3, c. 130; 6 Geo. 4, c. 81; 7 & 8 Geo. 4, c. 53; 4 & 5 Will. 4, c. 51; and 8 & 9 Vict. c. 15. The duties payable on sales by auction were repealed by 8 & 9 Vict. c. 15, s. 1.
Particulars and conditions of sale.	4. The particulars or conditions of sale, which more immediately concern the parties themselves, are of the first importance, and require to be drawn up with special care.
Conduct of the sale.	5. The conduct of the sale rests with the auctioneer, who at all times was held to be an agent for the vendor, <i>Bexwell v. Christie</i> , 3 Bing. 368; and according to the later decisions, he has been held to be also an agent for both parties, <i>Emmerson v. Heelis</i> , 2 Taunt. 38; <i>Kemys v. Proctor</i> , 3 V. & B. 57; <i>S. C.</i> 1 J. & W. 350; and as an agent he cannot delegate his authority, and cannot therefore authorize any one, not even his own clerk, to sell without the consent of the owner of the property, <i>Coles v. Trecothick</i> , 9 Ves. 236; although for some purposes the clerk may also be an agent for both parties as well as the auctioneer himself, <i>Payne v. Cave</i> , 3 T. R. 148; <i>Gosbell v. Archer</i> , 2 Ad. & Ell. 500; <i>S. C.</i> 4 Nev. & Man. 485; <i>S. C.</i> 1 Har. & Woll.
Auctioneer an agent for both parties.	31. An auctioneer, who is employed to sell goods by auction, has not such an interest as will make the licence to enter the premises for that purpose irrevocable, <i>Taplin v. Florence</i> , 10 C. B. 744.
Auctioneer an agent without written authority.	No written authority is necessary to constitute the auctioneer an agent for both parties, the seller giving authority by his instructions to sell, and the buyer, to whom the conditions of sale, pasted on the auctioneer's box, are a sufficient notice of the terms by his bidding aloud, <i>Simon v. Motivos</i> , 1 Bl. 599; <i>S. C.</i> 3 Burr. 1921; <i>Hinde v. Woodhouse</i> , 7 East, 558; <i>Emmerson v. Heelis</i> , 2 Taunt. 38; <i>Shelton v. Livius</i> , 2 Tyrw. 436; <i>Bird v. Boulter</i> , 4 B. & Ad. 443; and an authority may be implied by certain acts without any verbal instructions, as if the owner of a horse sent it to a common repository for the sale of horses, or the proprietor of goods send them to an auction room, <i>Pickering v. Bush</i> , 15 East, 42; and so an auctioneer's clerk can bind the purchaser as well as the vendor by an entry made in
Implied authority.	

their presence, as by their silence when the hammer falls he is considered to have their authority to execute the contract on their behalf, *Farebrother v. Simmons*, 5 B. & Ald. 333. An auctioneer selling by auction railway shares, without disclosing the name of his principal, is personally liable for performance of the contract, though he afterwards offer to give the name of his employer, *Franklin v. Lamond*, 11 Jur. 780; 16 L. J., C. P. 221; 4 C. B. 637.

An auctioneer, in conducting a sale by auction, cannot deviate from the strict terms of his instructions; if he does, he will be personally amenable for the consequences, *Powell v. Sadler*, cited Paley, P. & A. 80; and therefore if he sell by private contract property intrusted to him to sell by auction, he will be held liable, *Daniel v. Adams*, Amb. 495; so if the auction duty attached on a sale through his neglect, he could not recover the same, *Capp v. Topham*, 6 East, 592; *Jones v. Nanney*, 13 Price, 76; *S. C. McClell. 25*. As to the duty and liability of the auctioneer with regard to the biddings at the sale, and the deposit after the sale, see *infra*.

Auctions.

Auctioneer must not exceed his authority.

6. To complete a sale by auction, there must be a bidding on the one side by one as a purchaser, and an acceptance of the bidding by the auctioneer, signified by the fall of his hammer, *Payne v. Cave*, 3 T. R. 148; and before the hammer is down, the purchaser may retract his bidding, *Ib.*; but the retraction must be made loud enough to be heard by the auctioneer, otherwise it will be of no avail, *Jones v. Nanney, ub. sup.*

Biddings at the sale.

The bidding must be by some person capable of being a purchaser, and therefore a bidding by a lunatic or idiot would be void, on the general principle that such person cannot make a valid contract, *Yates v. Boen*, 2 Str. 1104, and so a bidding by a drunken man, *Pitt v. Smith*, 3 Campb. 38; and so it is not competent to an auctioneer to make a bidding, unless he acts as duly authorized agent, *Coles v. Trecothick*, 9 Ves. 248.

Biddings by competent persons.

The courts at one time discountenanced private biddings, holding them to be a fraud upon the purchaser, *Bexwell v. Christie*, Cowp. 395; and the acts of parliament, which permit a private bidding on behalf of the vendor, were held to be made for the protection of the revenue, and not to interfere with private rights, *Howard v. Castle*, 6 T. R. 642; it seems, however, now to be settled, that a private bidding is admissible when used only to prevent the property from being sold below its real value, *Smith v. Clarke*, 12 Ves. 477; therefore where a person is employed, not for a defensive purpose, but to screw up the price, the sale has been held bad, *Ib.* 483; so likewise where more than one person is employed, *Wheeler v. Collier*, 1 Mood. & M. 123; *R. v. Marsh*, 3 Y. & J. 331; so likewise where, in the conditions of sale, it is stated that the estate is to be sold "without reserve," *Meadows v. Turner*, 3 Madd. 34. See *post*, p. 439.

Private biddings how far admissible, or otherwise.

Auctions.

Deposit part
of purchase
money.

To obviate all questions, the vendor ought to give notice in the conditions of sale, that the owner may bid once in the course of the sale.

7. After the completion of the sale, it is usual to require a sum to be paid down by way of deposit; and this payment will be deemed to be in part of the purchase money, and not as a pledge, *Pordage v. Cole*, 1 Saund. 320; but it will not be deemed in equity to be sufficient part performance of a contract so as to take the cause out of the Statute of Frauds, *Main v. Melbourne*, 4 Ves. 720.

Payment of
deposit to auc-
tioneer.

If by the conditions of sale the deposit is made payable to the auctioneer or solicitor, the payment ought to be immediately required, *Hanson v. Roberdeau*, 1 Peake, 120. The auctioneer, in receiving the deposit, is deemed a mere stakeholder, and not an agent, as in the case of the sale; and he cannot legally part with it until the sale is completed, and it appears to whom it properly belongs, *Burrough v. Skinner*, 5 Burr. 2639; and he will be answerable to the purchaser for the deposit, though he may have paid it over to the vendor, *Edwards v. Holding*, 5 Taunt. 815; *S. C.* 1 Marsh. 377; but if he retain the money, he is not liable to pay interest for it, *Lee v. Munn*, 8 Taunt. 45; *S. C.* 1 Moore, 481; although he place the money in the funds, and make interest of it, *Harrington v. Hoggart*, 1 B. & Ad. 577; and it makes no difference that the vendor desires the money to be put out to interest, if the purchaser does not join in the request, *Ib.*

Interpleader
bill by auc-
tioneer.

Relief under
the Inter-
pleader Act.

Where there is an adverse claim, the auctioneer may either file an interpleader bill, *Farebrother v. Prattent*, 5 Price, 303; *S. C.* 1 Dan. 64; *Annesley v. Muggridge*, 1 Madd. 593; or he may seek relief under the Interpleader Act, 1 & 2 Will. 4, c. 58, *Allen v. Gilby*, 3 D. P. C. 113; see Sugd. V. & P. pp. 41, 42, 13th ed.; but he cannot file a bill of interpleader, if he insist on retaining out of the deposit either his commission or the auction duty; for interpleader is, where the plaintiff is wholly indifferent between the parties, and the right to which will be fully settled by interpleader between the defendants, *Mitchell v. Hayne*, 2 Sim. & Stu. 63. Where an auctioneer has sold the same estate to and received a deposit for it from two different parties, each of whom insists on the completion of the sale to himself, and the vendor brings an action against the auctioneer for both deposits, he cannot combine the three cases in one bill of interpleader; for the case must be one in which the fund is matter of contest between two parties, and in which the litigation between those parties will decide all their respective rights with respect to the fund, *Hoggart v. Cutts*, Cr. & Phill. 197. If upon a bill filed for an injunction the court order the deposit to be paid into court, it will, it seems, deduct the charges of the auctioneer, *Annesley v. Muggridge*, 1 Madd. 393; yet without prejudice to any question as to so much of the deposit as is retained, *Vates v. Farebrother*, 4 Madd. 289; and

under the Interpleader Act, an auctioneer paying the deposit into court was held entitled to receive his costs out of the fund so paid in, *Pitchers v. Edney*, 4 Bing. N. C. 720. See *Deller v. Prickett*, 15 Jur. 168; 20 L. J., Q. B. 151.

Where a vendor resists the application of the purchaser that the deposit in the auctioneer's hands shall be paid into court, he shall be charged with the loss occasioned by the auctioneer's failure, *Fenton v. Browne*, 14 Ves. 144; and where the deposit, pending any suit for specific performance, is invested by order of the court, it will be deemed part of the purchase money, and the vendor must abide by the rise or fall of the funds, *Poole v. Rudd*, 3 B. C. C. 49. So where the purchaser invested the deposit, and giving notice to the vendor, the latter returned no answer, it was held, that the advantage of a rise and the loss by a fall of the stock belonged to the purchaser, *Roberts v. Massey*, 13 Ves. 561. See Sugd. V. & P. pp. 43, 44, 13th ed.

Where the deposit has been paid to the vendor, and he fails to complete his contract, he is answerable to the purchaser not only for the deposit, but also for interest thereon, *De Bernales v. Wood*, 3 Campb. 258; *Maberly v. Robins*, 5 Taunt. 625; *S. C.* 1 Marsh. 258; and the purchaser is entitled to interest from the time the purchase should have been completed, *Farquhar v. Farley*, 7 Taunt. 592; *S. C.* 1 Moore, 323; recognized in *Harrington v. Hoggart*, *ib. sup.*; and the case is the same if the money is paid to an agent for the vendor, *Duke of Norfolk v. Worthy*, 1 Campb. 337; but the plaintiff's remedy for the return of the deposit is at law, and a court of equity will not give relief in such cases, *Sainsbury v. Jones*, 2 Beav. 462; yet where, after a bankrupt's estate has been sold and the purchaser has paid a deposit, the fiat is superseded, the court will order the return of the deposit, without compelling him to file a bill, *Ex parte Fector*, 1 Buck. 428; and in some cases a purchaser has been held not entitled to a return of the deposit, as where a bill for specific performance, filed by a purchaser, has been dismissed, the court will not order the deposit to be returned, as that would be decreeing relief, *Bennet College v. Carey*, 2 B. C. C. 390. So where there is an implied agreement between the seller and the buyer, that, if the former will annul the contract, the latter will not compel a return of the deposit, it appears that the purchaser cannot afterwards bring an action for the recovery of the deposit, *Clark v. Upton*, 3 Man. & Ry. 89; and see *Horford v. Wilson*, 1 Taunt. 12. In *Saville v. Saville*, 1 P. Wms. 745, it was said, that if a purchaser submitted to forfeit his deposit, a court of equity would not compel him to complete the contract; but the reporter adds, that it was not the general law of the court at that time; and it seems that a purchaser cannot elect to put an end to the agreement by forfeiting the

Auctions.

Effect of auctioneer's insolvency.

Investment of the deposit.

Purchaser entitled to interest on deposit.

Deposit not returnable.

Forfeiture of deposit.

Auctions.

Auctioneer's
liability as to
charge of
goods.

deposit, 1 Sugd. V. & P. p. 51, 11th ed., citing 2 Mer. 506; 9 Ad. & Ell. 520; see further as to forfeiture, *post*, CONDITIONS OF SALE.

8. On the general principle of the auctioneer being an agent, he is bound to take as much care of the goods intrusted to him as he would take of his own; and if loss or damage arises to it through his default, he will be liable to the owner for it, *Maltby v. Christie*, 1 Esp. 340; *sed secus*, if it be purely accidental, *Ib.* Goods are privileged from distress during the time they are on the premises of the auctioneer for the purpose of a sale by auction, *Williams v. Holmes*, 8 Exch. 861.

Proceeds of
sale.

An auctioneer is in general not responsible for the purchase-money, unless he has received it; but if he sell on credit, without the express order of his principal, he is then liable to the latter for the purchase-money, *Williams v. Millington*, 1 H. Bl. 81. When he has received the purchase-money, it is his duty to pay over the same to his employer immediately; and this he may do, although the latter is to his knowledge in insolvent circumstances, *White v. Bartlett*, 9 Bing. 378; *S. C.* 2 M. & Sc. 515; so where the owner of goods, sold by an auctioneer, had committed an act of bankruptcy before the sale, but without the knowledge of the auctioneer, held, that payment by the latter of the proceeds to the owner was protected by the Bankrupt Acts, *Coles v. Robins*, 3 Campb. 183; but he will be liable to the real owner of goods, if, after a written notice that they did not belong to his employer, he persists in the selling them, *Hardacre v. Stewart*, 5 Esp. 103; so where he sold the goods of B. as the goods of A., and suffered the buyer to pay A., he could not afterwards maintain an action for the price, *Coppin v. Walker*, 7 Taunt. 237; *S. C.* 2 Marsh. 497; and if after a sale he rescinds the contract with the buyer, without the express consent of the owner, he will be liable to him in an action of assumpsit for the proceeds of the sale, *Nelson v. Aldridge*, 2 Stark. 435; and where he sold goods wrongfully under a *fi. fa.*, without being expressly retained by the sheriff, held, that he could not maintain an action against the latter for any breach of an implied contract of indemnity, *Farebrother v. Ansley*, 1 Campb. 343.

Remuneration
of auctioneer.

9. An auctioneer, like every other agent, is entitled to remuneration, but the extent of the remuneration is a matter of stipulation; for where there is no contract, and no usage of trade, there will be no commission, *Taylor v. Brewer*, 1 M. & S. 290; and he has a lien for his commission and expenses, not only upon goods in specie, but also upon the proceeds, *Drinkwater v. Goodwin*, Cowp. 251; but he may forfeit his right to all remuneration, if, by his negligence or unskilfulness, no benefit accrue to his employer from the service performed, *Capp v. Topham*, 6 East, 392; or if he so act as to deprive himself of his remedy against the parties, as if he sells goods belonging to both A. and B., as the goods of A. only, and suffers the buyer to

settle with A. for them, without giving him notice that he had any claim on them, he cannot recover the proceeds from the buyer, *Coppin v. Walker*, 7 Taunt. 243; *S. C.* 2 Marsh. 497.

Auctions.

10. The validity of the contract for a sale by auction depends upon many circumstances: First, as to the particulars of sale, whether they are correct or otherwise, see *post*, PARTICULARS OF SALE; and as to the conditions of sale, whether they have been complied with or otherwise, see *post*, CONDITIONS OF SALE.

Validity of the contract.
Particulars and conditions of sale.

Secondly, whether the sale has been properly conducted as to the biddings. The employment of puffers will vitiate the sale. See *Sugd. V. & P. Ch. I. s. 2*. Where a sale by auction is advertised or stated by the auctioneer to be without reserve, the employment by the vendor of a puffer to bid for him, without notice, renders the sale void, and entitles the purchaser to recover back his deposit from the auctioneer, *Thornett v. Haines*, 15 M. & W. 367.

Biddings at the sale.

Where property is advertised to be sold "without reserve," such advertisement is understood to exclude any interference by the vendor, either direct or indirect, which can, under any possible circumstances, affect the right of the highest bidder, whatever may be the amount of his bidding, to be declared the purchaser; and any evasion of that engagement on the part of the vendor being a violation of his contract with the public, will disentitle him to the aid of a court of equity to enforce the sale. Therefore, where previously to a sale of a life interest, which was advertised to be "without reserve," the vendor entered into a private agreement with another person, that the latter should bid a certain sum at the auction and be the purchaser at that sum unless a higher sum were bid, a bill by the vendor for the specific performance against a third party who had been declared the purchaser at the auction, though for a much higher price, was dismissed, *Robinson v. Wall*, 2 Phill. C. C. 372.

Thirdly, whether the provisions of the Statute of Frauds have been complied with. In the first place, contracts for sale by auction must, to be valid, be in writing; but it seems to be now settled that an auctioneer, being an agent lawfully authorized by both parties to sign a contract for them, his writing down the name of the purchaser on the sale bill opposite to the lot purchased, is a note or memorandum in writing sufficient to satisfy the intent of the statute, *Emmerson v. Heelis*, 2 Taunt. 38; and so the signature of the auctioneer on the sale of goods has been held to be within the 17th section of the same statute, *Hinde v. Whitehouse*, 7 East, 558.

Provisions of the Statute of Frauds.
Contracts in writing.

In the next place, it has been a question, whether on sales by auction the contract is to be considered as entire or separate; and this seems to have depended upon whether the enjoyment of the whole was essential to the enjoyment of any part. Where, therefore, a man purchased two lots at an auction, to one of which only a title could

Contract entire or otherwise.

Auctions.

be made, this was held to be an entire contract, and that the purchaser might rescind the same, *Chambers v. Griffith*, 1 Esp. 150; *S. P. Gibson v. Spurrier*, Peake's Add. Cas. 49; *sed secus*, where the lots are not so complicated with each other as to render those to which there is no title necessary to the enjoyment of the rest, *Poole v. Shirgoold*, 2 B. C. C. 118; *S. C.* 1 Cox, 273; but in the case of a sale of goods by auction, the contracts for different lots at different sums have been held separate both at law and in fact, *James v. Shore*, 1 Stark. 426, "a complete bargain being made as to each article as soon as the auctioneer has signed his name to it," per Best, J., *Baldey v. Parker*, 2 B. & C. 37; *S. C.* 3 D. & Ry. 220; therefore, where several lots are knocked down to the same bidder, each of which is under 10*l.*, although the aggregate is above that sum, yet the statute in such case does not apply, and neither writing or delivery is necessary, *Emmerson v. Heelis*, 2 Taunt. 38; and on the same ground it has been decided, that where each of several lots sold is under 20*l.*, no stamp was necessary upon the agreement for each lot, *Roots v. Lord Dormer*, 4 B. & Ad. 77; *S. C.* 1 Nev. & Man. 667. As to the case of a sale by private contract, the current of opinion is to consider the contract entire, on the principle that the having the whole of the lots may be an inducement to purchase at all, *Baldey v. Parker*, recognizing *Champion v. Short*, 1 Campb. 52.

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Conditions of Sale by Auction, see post, CONDITIONS OF SALE.

—◆—

No. CCXV.

No. CCXV.

Notice
(appointing a
Bidder).

*Notice of appointing a Person to bid for the Owner and his
Acceptance of the Appointment.*

Take notice that (*intended bidder*) is appointed by (*owner*) the real owner of the estate goods or effects intended to be by you put up to sale by way of auction on the day of to bid at the sale for the use and behoof of the said (*O.*)

And take notice also that the said C. D. has agreed accordingly to bid at the said sale for the use and behoof of the said E. F.

Witness their hands this day of 185

(owner)

Witness A. B.

(bidder)

To Mr.

Auctioneer.

No. CCXVI.

No. CCXVI.

Notice that a Steward or Agent intends to bid for the Owner.

*Bidding by
Steward, &c.*

Take notice that (*steward*) the steward or known agent of (*owner*) of &c. owner of the estate &c. intended &c. [*see above*] [the said (*S.*) being actually employed in the management of the sale of such estate &c.] is about to bid at the said sale for the said (*O.*) As witness the hand (*a*) of the said (*S.*) the day of

(*steward*)

To Mr. Auctioneer.



No. CCXVII.

No. CCXVII.

Notice of appointing by a Steward or Agent a Person to bid for the Owner.

*Notice
(appointing
Bidder by
Steward).*

Take notice that (*intended bidder*) is appointed by (*S.*) the steward or known agent of (*owner*) the owner of the estate &c. intended &c. [the said (*S.*) being actually employed in the management of the sale of such estate &c.] to bid at the said sale for the use and behoof of the said (*O.*)

And take notice also that the said (*I. B.*) hath agreed and doth intend accordingly to bid at the said sale for the use of the said (*O.*) As witness the hands of the said (*S.*) and (*I. B.*) the day of

(*steward*)

(*intended bidder*)

Witness A. B.

To Mr. Auctioneer.

(*a*) In this case it is sufficient if the notice is signed by the steward or agent only ; but see the form following.

PARTICULARS OF SALE.

- | | |
|--|--|
| <p>1. <i>Description of Property.</i>
2. <i>Description must be accurate.</i>
3. <i>Description must be clear.</i>
4. <i>Construction of the Particulars.</i>
<i>Trifling Variation not material.</i>
<i>Particular Words.</i>
<i>“More or less.”</i>
<i>“Clear yearly Rent.”</i>
<i>Extent of the Acre.</i></p> | <p>5. <i>What deemed to be Misdescription.</i>

6. <i>Effect of Misdescription.</i>
<i>If fraudulent, will vitiate Sale,</i>
<i>but not if unintentional.</i>
<i>Compensation.</i></p> |
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Description of property.

SECT. 1. Particulars of sale are a description of the things to be sold, which may be merely a verbal statement or in writing, or there may be a plan annexed by way of explanation. It is commonly the business of the auctioneer to draw up such particulars, but considering the importance of accuracy in a document of this kind, it seems advisable, where the property is of magnitude, and the title not perfectly clear, that the matter should not be left exclusively in his hands.

Description must be accurate.

2. A vendor must not only be careful to guard against misdescription, but his description must be accurate; for “if a person, however unconversant in the actual situation of his estate, will give a description, he must be bound by that, whether consulant of it or not;” per Lord Thurlow, C., *Calverley v. Williams*, 1 Ves. jun. 213; and verbal declarations by the auctioneer, by way of explanation at the time of the sale, will not be admitted, *Gunnis v. Erhart*, 1 H. Bl. 289; *Bradshaw v. Bennett*, 5 C. & P. 48; and this rule prevails in equity as to law, *Jenkinson v. Pepys*, cited 6 Ves. 330; and extends to the seller as well as to the purchaser, *Higginson v. Clowes*, 15 Ves. 515. So where the particulars of sale described the estate as held for three lives, and one dropped before the sale, and the auctioneer stated the fact, held that evidence of his statement could not be received, and that the auctioneer ought to have altered the particulars, *Bradshaw v. Bennett*, *ub. sup.* The alteration in the particulars and conditions of sale which have been circulated must be in writing, and the auctioneer must require particular attention to the alteration and the purchaser’s signature of the copy as altered, *Manser v. Bach*, 6 Hare, 443.

Description must be clear.

3. Particulars and plans should be so framed as to convey clear information to the ordinary class of persons who frequent sales by auction; therefore, where the particulars stated that a lot was to be subject to the same rights of way over the same as were then enjoyed under the existing leases of certain houses, and a plan which was

referred to disclosed one way but not another over the lot, which was also then existing,—held, that the contract was not binding on the purchaser, *Dykes v. Blake*, 4 Bing. N. C. 463; 6 Scott, 320; *S. C.* 1 Arn. 209; and the reading of a lease at the time of the sale will not excuse any misdescription, *Jones v. Edney*, 3 Campb. 284. So where an original lease contained a power of re-entry if certain trades were carried on, and the lessee granted underleases which contained no such stipulation, and upon a sale by an assignee of the lessee it was stated that the covenant in the original lease would be inserted in underleases to be granted to the purchasers, but did not state whether the covenant was inserted in the underleases already granted,—held, that the purchaser might recover his deposit on account of such omission, as none but a very careful person would have suspected that in underleases already granted that covenant had not been inserted, *Waring v. Hoggart*, 1 Ry. & Mood. 39. So in equity specific performance will not be decreed against a purchaser at an auction where the particulars of sale were so vague and indefinite that a purchaser could not know what he was contracting for, and might be easily misled, *Steward v. Allistoun*, 1 Mer. 26; *Trower v. Newcombe*, 3 Mer. 704; *Pope v. Garland*, 4 Yo. & Coll. 403.

Particulars of Sale.

4. A particular writing for the purchase of an estate, is not a writing within the Statute of Frauds, and therefore unless the party purchased by it, or it was shown him at the time of the purchase,—held, that he could not compel a specific performance if it contained more than the words of the conveyance would in strictness carry, *Cass v. Waterhouse*, Prec. Chanc. 29.

Construction of the particulars.

A trifling variation in the description of an estate sold by auction, is not material if the transaction be fair, *Calcraft v. Roebuck*, 1 Ves. jun. 221; and a purchaser will not be entitled to claim a part of an estate which, though answering to the general description in the advertisement, was not included in a more particular description, *Calverley v. Williams*, 1 Ves. jun. 210.

Trifling variation not material.

As a rule, the words usually employed in describing the quantity “containing by estimation acres, more or less,” import that the precise quantity is not warranted; and where there is considerably less than was stated, the purchaser will be entitled to an abatement, *Hill v. Buckley*, 17 Ves. 394; and see *Portman v. Mill*, 2 Russ. 571.

Particular words “more or less.”

By the words “clear yearly rent,” is to be understood clear of all outgoing, incumbrances, and other extraordinary charges, not such as are according to the custom of the country, as tithes, poor rates, church rates, &c., which are usual charges on the tenant.

“Clear yearly rent.”

Formerly acres were either customary, that is, according to the measure of the country, or they were by statute; and although for the most part lands were sold according to the latter measure, *Wing v. Earle*, Cro. El. 267; *Morgan v. Tedcastle*, Poph. 55; yet where a man agreed to convey a certain number of acres of land which were

Extent of the acre.

Particulars of Sale. known by estimation, there the acres were taken according to the estimation of the country where the land lay, *Some v. Taylor*, Cro. El. 665; but now by 5 & 6 Will. 4, c. 63, all customary measures are abolished. See Sugd. V. & P. Ch. VI. s. 3.

What deemed a misdescription. 5. There may be a misdescription in the particulars, either by stating things differently from what they really are, or by omitting to state what ought to be known; as stating the property to be one mile from a borough town, which proved to be four miles, *Norfolk (Duke) v. Wortley*, 1 Campb. 337; or describing a public-house as "a free house," when by a covenant in the lease it appeared that the lessee was obliged to take his beer from a particular brewer, *Jones v. Edney*, 3 Campb. 285; or stating in general terms that there was a covenant in the lease against carrying on any offensive trade, instead of enumerating the particular trades contained in the covenant, *Flight v. Booth*, 1 Bing. N. C. 370; *S. C.* 1 Scott, 170; or omitting to state verbally, or to show by a plan a particular right of way over a particular lot, *Dykes v. Blake*, 4 Bing. N. C. 463; or omitting to mention that notice had been given by the landlord of his intention to enter unless the premises were put in repair, *Stevens v. Adamson*, 2 Stark. 422; or omitting to state that a house, which formed part of the premises demised by a lease, had been pulled down before the sale, *Granger v. Worms*, 4 Campb. 83; or stating that the goods to be sold belonged to one man, when in fact they belong to another, *Coppin v. Walker*, 7 Taunt. 237; *Coppin v. Craig*, *Ib.* 243. See *Flight v. Barton*, 3 My. & K. 282; *King v. Wilson*, 6 Beav. 124; *Dykes v. Blake*, 4 Bing. N. C. 463. If the property be held by underlease, or other property is comprised in the lease, the fact should be stated, otherwise the vendor cannot compel specific performance, *Blake v. Phinn*, 3 C. B. 976; *Law v. Urlwin*, 16 Sim. 377; *Madeley v. Booth*, 2 De G. & Sm. 718.

Effect of misdescription, if fraudulent, will vitiate the sale, 6. An error in the description of the property to be sold by auction may be such as either to vacate the contract altogether, or to make it a subject for compensation. A misdescription wilfully introduced into the particulars, whether material or not, will vitiate the sale, *Norfolk (Duke) v. Wortley*, *ub. sup.*; for if particulars of sale by auction are calculated to entrap persons, the sale is void, *Robinson v. Musgrove*, 8 C. & P. 469; but if the error be unintentional, and there is, as is usually the case in conditions of sale, a stipulation providing against such errors, it will at law be cured by the conditions, *Leach v. Mullett*, 3 C. & P. 115; but "equity will enforce a sale with a compensation for a slight unintentional misdescription, although there is no such condition, and will not assist the seller, where there is such a condition, if the misdescription be an important one," 1 Sugd. V. & P. p. 30, 11th ed., citing *Stewart v. Allerton*, 1 Mer. 26; *Powell v. Double*, MS. V. C. 15 June, 1832.

but not if unintentional.

Compensation.

The mere exhibition of plans at the sale, if the contract is silent on

the subject, do not afford a guarantee that improvements exhibited on them will be carried out, *Fcoffees of Heriot's Hospital v. Gibson*, 2 Dow. 301; *Squire v. Campbell*, 1 My. & Cr. 459; *Randall v. Hall*, 4 De G. & Sm. 343. See *ante*, p. 442.

See *post*, CONDITIONS OF SALE.

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No. CCXVIII.

Particulars of Sale by Auction (a) of a Freehold Estate (b).

No. CCXVIII.

*Particulars of
Sale.
Freehold.*

The several freehold pieces or parcels of land or ground situate at in the county of containing by estimation acres (c) more or less called or known by the several names of [*here set out the particulars*] and now in the occupation of [*specify the several tenants, if more than one, to each piece of land, and state the nature and terms of the tenancy.*]

This property is subject to a certain mortgage in fee [*or "for*

(a) In the advertisements of sales by auction, it should be stated that the estate will be sold by auction at the place and time fixed, "unless previously sold by private contract, in which case notice of the sale will be immediately given to the public."

If the particulars describe the property as "free from all incumbrances," it will be deemed a misdescription, and will vitiate the sale, if it appears afterward that there is an annuity charged upon it, be it ever so small, *Gunnis v. Erhart*, 1 H. Bl. 289.

If therefore the property be charged with an annuity, say,

"This property is subject to a yearly sum of £ issuing out of the same, and payable to (*annuitant*) who is now in the year of his age during the term of his natural life."

(b) If it be a remainder or reversion, say,

"The remainder or reversion of (*reversioner*) expectant upon and to take effect in possession immediately after the decease of (*tenant for life*) of and in all &c."

If it be an advowson, say,

"The advowson donation or perpetual right of patronage and presentation of in and to the rectory or parish and parish church of in the county of (and all glebe lands &c." *if any appurtenant to the advowson*).

If it be a rent-charge, say,

"The yearly rent-charge or annual sum of £ issuing out of and chargeable upon all the lands &c. situate at in the county of and payable to the said (*rentor*) for and during the term of his natural life under &c."

(c) The acres were formerly distinguished as they were statute or customary, which, since the 5 & 6 Will. 4, c. 63, is unnecessary, see *supra*, sect. 4.

No. CCXVIII. term of years”] for securing the principal sum of £ and
Particulars of interest [or “ this estate is subject to an annual rent charge of
Sale. £ in lieu of tithes,” or “ tithe free,”] *as the case may be.*
Freehold. [Where the property is copyhold, state whether the fines are certain
or arbitrary, and the amount of the quit rents.]

No. CCXIX.
Leasehold.

No. CCXIX.

Particulars of Sale of a Leasehold Estate (a).

A messuage or tenement with the yard garden and outbuild-
ings &c. situate &c. and now in the occupation of
The premises are held for the residue of a term of years
under a lease dated &c. subject to a rent of £ and under
the common usual covenants (b).

AWARDS.

See *ante*, ARBITRATION, pp. 331—343.

BARGAINS AND SALES.

- | | |
|--|---|
| 1. <i>Definition of a Bargain and Sale.</i> | 4. <i>Requisites of a Bargain and Sale.</i> |
| 2. <i>What passes by a Bargain and Sale.</i> | <i>Inrolment.</i> |
| 3. <i>Consideration.</i> | 5. <i>Operation.</i> |
| <i>Operative Words.</i> | 6. <i>Bargains and Sales of Goods.</i> |
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Definition of a
bargain and
sale.

SECT. 1. A bargain and sale is defined to be a contract, in con-
sideration of money, passing an estate in lands, tenements, and here-

- (a) As to the effect of misdescription of leasehold estates, see *ante*, PAR-
TICULARS OF SALE, Pref. sect. 5, p. 444.
- (b) A covenant in a lease to pay the land tax and sewer rate has been held
to be a common and usual covenant, and that the purchaser of a lease con-
taining such a covenant was not at liberty to rescind the contract on the
ground of misdescription, *Bennett v. Womack*, 7 B. & C. 627; *S. C.* 1 Man.
& Ry. 614; and the same rule prevails in equity, *Barrand v. Archer*, 2 Sim.
433; *S. C.* 2 Russ. & My. 751. As to the omission of unusual covenants,
see *supra*, sects. 5, 6, p. 444.

ditaments, by deed indented and enrolled, 2 Inst. 672. The conveyance of lands by bargain and sale derives its operation partly from the doctrine of uses at common law, but more particularly from the Statute of Uses, 27 Hen. 8, c. 10, which executes all uses that are raised. As a use is the basis of the deed, no person can make a bargain and sale who is incapable of being seised to a use. A corporation cannot bargain and sell, because no use can be raised on their seisin, 10 Rep. 24; Gilb. Us. 285. The use cannot be limited on a bargain and sale to any but the bargainee, as the effect of the bargain and sale is only to raise a use, and a use cannot be limited upon a use, Dy. 155; Poph. 81; so that this assurance does not admit of the reservation of general powers under which the legal estate can be vested in the appointee. The estate of the bargainee, when executed, may be made subject to trusts; but if it be intended that a use should be executed to any other person than the vendee, some other mode of conveyance should be adopted. The conveyance by bargain and sale is now seldom used, except by commissioners or others under an act of parliament, or trustees under a will or otherwise, in which case the bargain and sale is considered as a common law conveyance. Bargains and sales of an use must be carefully distinguished from bargains and sales by executors under a naked authority to sell contained in wills, or by other parties under an authority given by an act of parliament. Such bargains and sales pass a seisin at the common law. In these cases enrolment is only necessary when it is prescribed by the power to be executed; and uses may be declared upon the seisin of the bargainee, 3 Prest. Abstr. 90, 112; 2 Id. 260; 3 Prest. Conv. 483.

2. By this kind of instrument, any freeholds of inheritance, whether in possession, reversion, or remainder, may be conveyed; so, likewise, whatsoever is capable of being limited to a use, as advowsons, tithes, commons, rents, profits of courts, &c. But no property can be bargained and sold which is not *in esse*. So if a man convey his lands to another in fee with a right of way over other lands, the right of way does not pass, Cro. Jac. 190; 2 Co. 74; Sand. Us. 74. A man possessed of a term for years cannot bargain and sell it so that it may be executed by the statute; but a man seised of a freehold may bargain and sell it for years, Gilb. Us. 85.

What passes by a bargain and sale.

3. To raise a use upon a bargain and sale, there must be some consideration of money, or money's worth as a horse rent, &c., Cro. Eliz. 394; 1 Co. 176; but the smallest consideration, as 5s., or even a penny, is sufficient, Sheph. Touchst. 222. The operative words in a bargain and sale are, "bargain and sell" But any other words, which, upon valuable consideration, would have raised a use of lands, &c. at common law, will amount to a bargain and sale within the statute, as if a man covenant to stand seised to the use of another, Cro. Eliz. 161; 2 Inst. 672; 2 Sand. Us. 47.

Consideration.

Operative words.

Bargains and Sales.

Requisites of a bargain.
Inrolment.

4. By the 27 Hen. 8, c. 19, a bargain and sale must be by deed indented, and not by deed poll, nor by print or stamp; and the writing must be upon parchment, 2 Inst. 672; 3 Leon. 16. The deed must likewise be inrolled on parchment only within six lunar months from the date, Dy. 218; 2 Inst. 273, 274; Sheph. Touchst. 223. A bargain and sale by a tenant in tail, under the 3 & 4 Will. 4, c. 74, is valid if inrolled within the time prescribed by that act, although not inrolled according to the statute 27 Hen. 8, c. 19; see 3 & 4 Will. 4, c. 74, s. 41. By the 5 Eliz. c. 26, bargains and sales of lands may be inrolled in the counties palatine; by the 5 Ann. c. 18, within the West Riding of York; and by the 6 Ann. c. 35, s. 16, within the East Riding of York, and Kingston-upon-Hull. By the 10th Ann. c. 18, s. 3, a copy of the inrolment of bargains and sales examined with the inrolment, and signed by the proper officers, and proved upon oath to be a true copy of such inrolment, shall be of the same effect as if the bargain and sale was produced. The Statute of Inrolments extends to bargains and sales of inheritances and freeholds only, and not to bargains and sales for years, which are good without inrolment.

Operation.

5. A bargain and sale is an innocent conveyance, and operates only on what the grantor may lawfully convey, 2 Sand. Us. 54. It does not work a discontinuance, create a forfeiture, nor destroy contingent remainders. A feoffment made after the 1st October, 1845, has not any tortious operation, 8 & 9 Vict. c. 106, s. 4.

Bargains and sales of goods.

6. There may be bargains and sales of goods and chattels as well as of lands, but they need none of the formalities prescribed by the statute. But terms for years must, by the Statute of Frauds, be now in writing, Sheph. Touchst. Prest. Ed. 224.



No. CCXX.

No. CCXX.

Copyholds.

Bargain and Sale of Copyholds to a Purchaser under a Power given to Executors.

This Indenture made the day of in the year of our Lord between A. B. of &c. and C. D. of &c. [executors named in and appointed by the last will and testament of E. F. late of &c. deceased] of the one part and G. H. of &c. of the other part *Whereas* at a court baron or customary court holden for the manor of in the county of on the day of the said E. F. was admitted tenant on the surrender of S. M. of &c. to certain customary or copyhold hereditaments lying within and holden of the same manor and including the messuages lands and hereditaments hereinafter

described and intended to be hereby bargained and sold or otherwise assured with their appurtenances to hold to him the said E. F. and his heirs according to the custom of the said manor of *And whereas* the said E. F. in and by his last will and testament in writing bearing date the day of gave and devised [*devise of freeholds to trustees in fee upon trusts for sale*] *And* the said testator did thereby authorize and empower the said A. B. and C. D. and the survivor of them at any time after his decease [*to sell copyholds and declaration that trustees' receipts should be sufficient discharges &c.*] *And* the said testator by his said will appointed the said A. B. and C. D. executors thereof *And whereas* the said E. F. departed this life on the day of without having revoked or in anywise altered his said in part recited will as far as related to his real estates so thereby devised and authorized and directed to be sold as aforesaid and the same was duly proved by the said A. B. and C. D. in the Court of Probate Principal Registry on or about the day of *And whereas* the said A. B. and C. D. by virtue of the said power or authority in that behalf given to them by the said in part recited will of the said E. F. deceased did lately contract and agree with the said G. H. for the sale to him of the messuages lands and hereditaments hereinafter described and the customary fee simple and inheritance thereof in possession free from incumbrances (except such fines rents customs and services as are payable and to be performed to the lord or lady lords or ladies of the manor of aforesaid for the time being for and in respect of the same premises respectively) at or for the price or sum of £ *Now this Indenture witnesseth* That for carrying into effect the said recited contract and for and in consideration of the sum of £ of lawful money of Great Britain to the said A. B. and C. D. in hand well and truly paid by the said G. H. at or before the sealing and delivery of these presents the receipt whereof the said A. B. and C. D. do hereby acknowledge and from the same and every part thereof do acquit release and discharge the said G. H. his executors administrators and assigns and every of them for ever by these presents They the said A. B. and C. D. in further pursuance and exercise of the said power or authority in this behalf given to them by the said in part recited will of the said E. F. deceased, and of all and every other powers and authorities power and authority in anywise enabling them hereunto do and each of them doth by these presents bargain and sell limit ap-

No. CCXX.

Copyholds.

No. CCXX.

Copyholds.

point convey and assure unto the said G. H. his heirs and assigns All &c. together with all erections &c. and appurtenances whatsoever to the said hereditaments and premises belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof *To have and to hold* all and singular the said customary or copyhold messuages lands hereditaments and premises hereby bargained and sold limited and appointed or otherwise assured or intended so to be with the appurtenances thereof unto and to the use of the said G. H. his heirs and assigns for ever But nevertheless according to the custom of the said manor of and subject to the rents fines customs and services payable and to be performed to the lord or lady lords or ladies of the same manor for the time being for and in respect of the same premises or any part thereof [*Several covenant by A. B. and C. D. that they had not incumbered, see post, p. 452*] *In witness &c.*



No. CCXXI.

No. CCXXI.

Of Copyholds by
Trustees.

Bargain and Sale of Copyholds by Trustees for Sale under a Will, the Parties beneficially interested covenant for Title.

Obs. If a copyholder by his will gives a bare authority to his executors or trustees to sell, they may do so without being admitted, and the lord will be bound to admit the vendee on the payment of one fine only, 2 Wils. 400; *Rex v. Lord of the Manor of Oundle*, 1 Ad. & E. 283; *White v. Vitty*, 2 Russ. 496.

Recital of
seisin and will.

This Indenture made &c. Between (Trustees) trustees of and under the last will and testament of A. I. late of deceased of the first part F. H. and K. I. and A. his wife of the second part [the parties beneficially interested] and (Purchaser) of &c. of the third part Whereas A. I. late of deceased widow being at the date of her will hereinafter in part recited and at her decease seised and possessed of or well entitled unto the copyhold messuage or tenement and premises hereinafter described with their appurtenances for an estate of inheritance according to the custom of the manor of D. in the county of made her last will and testament in writing bearing date &c. and duly executed and attested and thereby among other things directed that the said (T.) and the sur-

vivor of them should as soon as conveniently might be after her decease by public sale or private contract sell and dispose of all that her copyhold messuage &c. with the garden and appurtenances thereunto belonging and should stand possessed of the money to be produced by such sale [after deducting the expenses thereof] *In trust* to divide the same between her two daughters the said F. H. widow and relict of the then late P. H. and the said A. I. the then and now wife of the said K. I. their executors administrators and assigns for their respective sole use and benefit exclusively of their husbands And the testatrix did thereby direct that the receipt and receipts of the said (T.) should be a good and sufficient discharge and good and sufficient discharges to the purchaser or purchasers of all or any part of the said copyhold messuage or premises *And whereas* the said A. I. departed this life on or about the day of without revoking or altering her said will leaving the said F. H. and A. I. her surviving and the said (T.) proved the said will in the Prerogative Court of the Archbishop of Canterbury *And whereas* the said (T.) in pursuance of the trust reposed in them by the said in part recited will of the said A. I. deceased and with the privity consent and approbation of the said F. H. and K. I. and A. his wife testified by their being respectively parties to and severally sealing and delivering these presents have contracted and agreed with the said (P.) for the absolute sale unto her of the said copyhold messuage or tenement and premises hereinafter described free from all incumbrances except as hereinafter mentioned at or for the price or sum of £ *Now this Indenture* *witneseth* That in pursuance of the said agreement and also in consideration of the sum of £ of &c. to the said (T.) as trustees as aforesaid in hand [with the like privity consent and approbation of the said F. H. and K. I. and A. his wife testified as aforesaid] well and truly paid by the said (P.) at or before the sealing and delivery hereof the receipt of which said sum they the said (T.) do hereby respectively acknowledge and that the same is the full consideration money for the absolute purchase of the said messuage or tenement hereditaments and premises with their appurtenances free from incumbrances except as hereinafter excepted and of and from the same sum and every part thereof and all claims and demands in respect thereof they the said (T.) and also the said F. H. and K. I. and A. his wife do and each and every of them doth release and for ever discharge

No. CCXVI.
*Of Copyholds by
Trustees.*

Contract for
sale.

Testatum.

No. CCXXI.
Of Copyholds by
Trustees.

Covenant by
trustees against
incumbrances.

Covenants by
parties bene-
ficially inte-
rested.

the said (*P.*) her heirs executors administrators and assigns and every of them by these presents They the said (*T.*) in pursuance exercise and execution of the power and trust in them reposed in and by the said in part recited will of the said A. I. deceased and by virtue of all and every other power and authority vested in or given to them *Do* and each of them *doth* by these presents so far as they can or lawfully may according to the custom of the said manor bargain and sell and the said F. H. and K. I. and A. his wife do and every of them doth hereby remise and release unto the said (*P.*) her heirs and assigns *All that* &c. [*description of parcels*] *And also* all houses &c. [*general words*] *To have and hold* All and singular the copyhold messuages lands and hereditaments hereby bargained and sold or intended so to be with the appurtenances unto and to the use of the said (*P.*) her heirs and assigns for ever according to the custom of the said manor under and subject to the rents fines customs and services of right due and accustomed to be paid and performed to the lord or lady for the time being of the said manor in respect of the same messuages or any part thereof *And* each of them the said (*T.*) doth hereby for himself his heirs executors and administrators separately and not the one for the other or others of them or the acts deeds or defaults of the other or others of them covenant with the said (*P.*) her heirs and assigns that they the said (*T.*) have not nor hath any or either of them at any time heretofore either together or separately made done or executed or knowingly or willingly permitted or suffered nor been parties or party or privy to any act deed matter or thing whatsoever whereby or by reason or means whereof the said messuage or tenement and premises hereinbefore bargained and sold or intended so to be or any part thereof are is can shall or may be impeached charged incumbered or prejudicially affected in title estate or otherwise howsoever or whereby the said (*T.*) respectively are in anywise hindered from respectively bargaining and selling the same premises or any part thereof in manner aforesaid *And* the said F. H. doth hereby for herself her heirs executors and administrators and as to one undivided moiety half part or share of and in the said hereditaments hereby bargained and sold or intended so to be and the estate right title quiet enjoyment freedom from incumbrances and further assurance of the same moiety half part or share *And*

the said K. I. doth hereby for himself his heirs executors and administrators and for the said A. his wife and her heirs as to the other undivided moiety half part or share of and in the same hereditaments and the estate right title quiet enjoyment and freedom from incumbrances and further assurance of the same moiety covenant with the said (P.) her heirs and assigns in manner following (that is say) That for and notwithstanding any act matter or thing whatsoever by them the said F. H. and K. I. and A. his wife or any of them or the said testator A. I. deceased at any time heretofore made done committed or knowingly suffered to the contrary they the said (T.) F. H. K. I. and A. his wife or some or one of them now have or hath good right full power and lawful and absolute authority to bargain sell and assure the said messuage lands and hereditaments hereby bargained sold or intended so to be with their appurtenances to the use of the said (P.) her heirs and assigns for ever in manner aforesaid and according to the true intent and meaning of these presents *And also* that it shall be lawful for the said (P.) her heirs and assigns from time to time and at all times hereafter peaceably and quietly to enter into and upon and to have hold use occupy possess and enjoy the said messuage lands and hereditaments hereby bargained and sold or intended so to be and every part thereof with their appurtenances and to receive and take the rents and profits thereof to and for her and their own use and benefit absolutely without any let suit trouble denial eviction claim or demand whatsoever of the said F. H. and K. I. and A. his wife or any of them their or any of their heirs or any other person or persons whomsoever lawfully or equitably claiming or to claim any estate right title or interest by from through under or in trust for them or any of them or the said testator (A. I.) deceased *And* that free and clear and freely clearly and absolutely or otherwise by the said F. H. and K. I. and A. his wife some or one of them their or some or one of their heirs executors or administrators well and effectually saved defended kept harmless and indemnified from and against all former and other gifts grants bargains sales mortgages freebench and right and title of freebench wills debts legacies forfeitures estates titles charges and incumbrances whatsoever made done committed executed or knowingly suffered by the said F. H. and K. I. and A. his wife or any of them or the said testator A. I. deceased or any person or persons claiming or to claim by from through

No. CCXXI.

Of Copyholds by Trustees.

Good right to convey.

Quiet enjoyment,

free from incumbrances.

No. CCXXI.
Of Copyholds by
Trustees.

For further as-
surance.

under or in trust for them or any of them (the rents and services due and of right accustomed to be paid and performed in respect of the said premises always excepted) *And* moreover that they the said F. H. and K. I. and A. his wife respectively and every person having or claiming or who shall or may at any time or times have or claim any estate right title or interest at law or in equity in to or out of the said messuage lands and hereditaments hereby bargained and sold or intended so to be or any part thereof by from through or under them or any of them or the said testator (A. I.) deceased shall and will from time to time and at all times hereafter at the request costs and charges of the said (*P.*) her heirs or assigns make do and execute or cause to be made done and executed all such further and other acts deeds surrenders and assurances whatsoever for the better and more effectually or satisfactorily surrendering and assuring the same messuage lands and hereditaments and every part thereof with their and every of their appurtenances to the use of the said (*P.*) her heirs and assigns for ever according to the custom of the manor of aforesaid Subject to the rents and services therefore due and of right accustomed as by the said (*P.*) her heirs or assigns or her or their counsel in the law shall be reasonably advised devised and required *In witness &c.*

No. CCXXII.

No. CCXXII.
Freeholds and
Copyholds.

Bargain and Sale of Freehold and Copyhold Hereditaments by Executors under a Will of a Mortgagor, with Release of Dower by the Widow.

This Indenture made &c. Between (rendors) executors and trustees under the will of (mortgagor) deceased of the first part (executors) executors and trustees of (mortgagee) of the second part (purchaser) of &c. of the third part A. L. widow of the said (mortgagor) of the fourth part and (sub-purchaser) of &c. of the fifth part Whereas by indenture bearing date on or about the day of &c. [mortgage by demise of freeholds and copyholds] And whereas &c. [recite death and will of mortgagee, leaving the executors parties of the second part] And whereas &c. [recite probate of will] And whereas the said (mortgagor) being so seised of and entitled to the said freehold hereditaments and being also seised or possessed of the said copyhold hereditaments

Recital of
mortgage.

Death and will
of mortgagor
and mortgagee.
Devise to exe-
cutors in trust
to sell.

for an estate of inheritance to him and his heirs according to the custom of the said manor of and having duly surrendered the said copyhold hereditaments to the uses of his will by his last will and testament in writing duly executed and attested for the devise of lands bearing date &c. appointed the said (*rendors*) executors of his said will and directed them as soon as conveniently might be after his decease to sell and dispose of all his lands &c. for the best price that could be obtained for the same either by public auction or private contract as they should think fit *And* the said testator did declare by his said will that the receipts of the said (*executors*) should be sufficient discharges for the purchase monies and that the purchasers should not be obliged to see to the application or be answerable for the misapplication or nonapplication of the same *And whereas* the said (*executors*) in pursuance of the power given to them by the said will have contracted with the said (*purchaser*) for the sale to him of the said freehold and copyhold lands hereinafter described and hereby bargained and sold or intended so to be and the fee simple and inheritance thereof subject to and charged with the payment of an annuity of £ to (*annuitant*) the mother of the said (*mortgagor*) for her life but free from all other incumbrances whatsoever at or for the price of £ but no conveyance hath yet been executed in pursuance of the said agreement *And whereas* the said (*purchaser*) hath agreed with the said (*sub-purchaser*) to give up to him the said (*sub-purchaser*) the benefit of his said contract *And whereas* the principal sum of £ only remains due to the said (*executors of mortgagee*) under and by virtue of the hereinbefore recited indenture all interest in respect thereof having been paid and satisfied up to the day of the date of these presents *And* it hath been agreed that the said sum of £ shall be discharged out of the said purchase-money *And* that the said term of years now vested in the said (*trustees of the term*) for securing the payment of the said sum of £ shall be assigned and surrendered in manner hereinafter mentioned *And whereas* the said fine covenanted to be levied by the said (*mortgagor*) and A. his wife in and by the said in part recited indenture was never levied and said A. now the widow and relict of the said (*mortgagor*) hath agreed to join in these presents and release her dower of and in the said freehold lands and hereditaments hereby bargained and sold or intended so to be *Now this Indenture witnesseth* That in pursuance and per-

No. CCXXII.
*Freeholds and
Copyholds.*

Contract of
sale.

Agreement to
release dower.

Testament to
the freeholds.

No. CCXXII. formance of the said agreement and in consideration of the sum
Freeholds and of £ to the said (*executors of mortgagee*) by the said (*sub-*
Copyholds. *purchaser*) immediately before the execution of these presents at
the request and by the direction of the said (*executors of mort-*
gagor) testified by their severally being parties to and executing
these presents and in full satisfaction and discharge of all money
due to them the said (*executors of mortgagee*) as such executors
as aforesaid which sum they the said (*executors of mortgagee*) do
hereby respectively acknowledge and of and from the same and
every part thereof do respectively acquit release and discharge
the said (*executors of mortgagor*) and each of them their and each
of their heirs executors administrators and assigns *And also* in
consideration of the further sum of £ being the residue
of the said sum of £ to the said (*executors of mortgagor*)
at the same time paid by the said (*sub-purchaser*) with the pri-
vity and consent of the said (*purchaser*) testified by his being a
party to and executing these presents the payment and receipt
of which said sums of £ and £ making together
the said sum of £ and that the same are in full for the
absolute purchase of the said lands tenements and hereditaments
respectively hereby bargained and sold or intended so to be and
the fee simple and inheritance thereof subject and charged as
aforesaid but free from all other incumbrances whatsoever they
the said (*executors of mortgagor*) do hereby respectively acknow-
ledge and of and from the same do hereby respectively acquit &c.
the said (*sub-purchaser*) and the said (*purchaser*) and each of
them their and each of their heirs &c. *And also* in consideration
of the sum of £ to the said (*purchaser*) at the same time
paid by the said (*sub-purchaser*) the receipt of which sum of
£ he the said (*purchaser*) doth hereby acknowledge and
of and from the same and also of and from the said sums of
£ and of £ so paid by the said (*sub-purchaser*) as
aforesaid doth hereby &c. They the said (*executors of mort-*
gagor) pursuant to and by force and virtue and in exercise and
execution of the power or authority given to and vested in them
in and by the said recited will of the said (*mortgagor*) deceased
and of every other power and authority in anywise enabling
them or either of them in this behalf and at the request and by
the direction of the said (*purchaser*) testified as aforesaid *Do*
and each of them *doth* by these presents bargain sell release
limit and appoint and they the said (*executors of mortgagee*)
for the purpose of surrendering and extinguishing the said term

of years so vested in them as aforesaid and at the request and by the direction of the said (*executors of mortgagor*), testified as aforesaid do and each of them doth hereby assign and also surrender and release And the said (*widow*) for the purpose of releasing and extinguishing all her dower right and title of dower and thirds and other right and interest of her the said (*widow*) of and in the said freehold lands and hereditaments hereby bargained and sold or intended so to be Doth hereby remise release and quit claim unto the said (*sub-purchaser*) and his heirs All such and so many and such part and parts as is or are freehold of and in All &c. [*parcels*] And of and in all houses outhouses [*general words*] And all the estate &c. To have and to hold all such part and parts as are freehold of and in the lands and other hereditaments hereinbefore described with their and every of their rights members and appurtenances [Subject nevertheless to the payment to the said (*annuitant*) of one annuity or yearly rent charge of £ during her life and to the usual powers and remedies for recovering and enforcing the payment of the same which said annuity or yearly rent charge was granted or limited to the said (*annuitant*) by a certain indenture bearing &c. and purporting to be a settlement made previous to the marriage of D. the elder and M. his wife then M. H. spinster] unto the said (*sub-purchaser*) his heirs and assigns for ever To the only use and behoof of the said (*sub-purchaser*) his heirs and assigns for ever And this Indenture further witnesseth That in pursuance and further performance of the said recited agreement and for the considerations hereinbefore expressed they the said (*executors*) at the like request and by the like direction of the said (*purchaser*) testified as aforesaid Do and each of them doth bargain and sell unto the said (*sub-purchaser*) his heirs and assigns All such and so many and such part or parts of the said lands and other hereditaments hereinbefore described as is or are of copyhold or customary tenure and holden of the said manor of by copy of court roll and of and in every part and parcel of the same with their and every of their rights members and appurtenances To have and to hold all such part and parts of the hereditaments hereinbefore described as are copyhold and all and singular other the copyhold hereditaments and premises hereinbefore bargained and sold or intended so to be with their and every of their rights members and appurtenances unto and to the use of the said (*sub-purchaser*) his heirs and assigns for ever at the will of the lord [or

No. CCXXII.
Freeholds and
Copyholds.

Habendum.

Further testimony as to the copyholds.

Habent'um.

No. CCXXII. "lady"] of the said manor according to the custom of the same and by and under the rents suits and services therefore due and of right accustomed to be paid and performed [*Several covenants by (executors of mortgagor) (purchaser) (executors of mortgagee and trustees of term) and (widow) that they have done no act to incumber, see ante, p. 452*] *In witness &c.*

*Freeholds and
Copyholds.*

BARGAINS AND SALES OF TIMBER.

- | | |
|--|---|
| 1. <i>Liberty to cut and carry away.</i> | 3. <i>Sale of Timber by Tenant in Tail.</i> |
| 2. <i>Timber Personal Estate or otherwise.</i> | 4. <i>Inrolment of Bargain and Sale.</i> |
| | 5. <i>Stamp.</i> |

Liberty to cut
and carry away.

SECT. 1. Although on a sale of trees the liberty to cut and carry them away is implied by law, yet it is prudent that the intention of the parties should be expressly declared as to the extent of the power to be granted to the purchaser.

Timber personal estate or otherwise.

2. If the vendor of timber, who is owner of the estate in fee, do not intend that the produce of the sale should go to his personal representatives, a declaration to that effect must be inserted in the bargain and sale, otherwise it has been held, that all timber which is agreed to be sold, and is cut after the vendor's death, will be part of his personal estate, see *Wms. Executors*, Pt. II. b. 11, ch. 2, s. 2.

Sale of timber
by tenant in
tail.

3. A tenant in tail cannot charge the estate after his death; if, therefore, he agree for the sale of trees growing on the inheritance, and die before they are actually severed, the vendee will not be permitted to fell one tree, but the heir shall have all the trees that are not severed, as part of the inheritance, *Plowd.* 259; *Perk.* sect. 58; *Liford's Case*, 11 Co. 50; *Poph.* 194. Some provision, therefore, for the death of the tenant in tail may be necessary in a contract for the sale of the growing timber by him.

Inrolment of
bargain and
sale.

4. A bargain and sale of timber need not be inrolled, unless it be conveyed with the freehold lands, 11 Co. 52, 176. See AGREEMENT FOR SALE OF TIMBER, *ante*, pp. 174—176.

Stamp.

5. As to the stamp, see GRANTS.

No. CCXXIII.

*Bargain and Sale of Timber.*No. CCXXIII.
Of Timber.

This Indenture &c. Between (*Vendor*) of &c. of the one part and (*Purchaser*) of the other *Witnesseth* That in consideration of the sum of £ to the said (*V.*) paid by the said (*P.*) at &c. the receipt whereof &c. He the said (*V.*) *Doth* hereby grant bargain and sell unto the said (*P.*) his executors administrators or assigns *All* and singular the trees of oak ash birch sycamore and other trees as they are set out and marked for sale standing and growing in the places as hereinafter mentioned [*parcels*] Together with full (*a*) liberty power and authority for the said (*P.*) his servants agents and workmen from the day of until the day of at all reasonable times to fell cut down grub up saw and work up the said trees and wood *And also* to lay and place the bark of the oak trees in convenient places for drying And to have free ingress and egress with or without horses waggons carts and carriages to enter into and upon the said premises for the purpose of taking and carrying away the said trees and wood with the bark of the oaks *And also* to dig and make saw pits in convenient places in the said grounds and to cut turf and get such sods and earth as may be necessary for working and converting the said wood into charcoal doing as little damage or spoil thereby as may be and keeping in or near such parts of the said premises as shall be marked out by the said (*V.*) or his steward or agent *To have and to hold* the said timber and all and singular other the premises hereby bargained and sold or intended so to be with their appurtenances unto the said (*P.*) his executors administrators and assigns absolutely to and for his and their proper use and benefit and as his and their own goods and chattels *And* the said (*V.*) doth for himself his heirs executors and administrators hereby covenant with the said (*P.*) his executors administrators and assigns that he the said (*V.*) at the time of sealing and delivery of these presents hath in himself good right full power and lawful and absolute authority to grant bargain and sell the said timber and other trees hereby bargained and sold or intended so to be *And* that he the said (*P.*) his executors administrators and assigns from time to time and

Testatum.

Liberty to cut
down, &c.

Habendum.

Covenants from
vendor.Good right to
sell.For quiet en-
joyment.

(a) As to this clause, see sect. 1.

No. CCXXIII. at all times hereafter within the space of months next
Of Timber. after the date of these presents shall and lawfully may have
hold take receive and enjoy all and singular the timber and
other trees and premises hereby granted bargained and sold or
intended so to be with their and every of their appurtenances
and fell hew and carry away the same without any manner of
hindrance interruption claim or demand whatsoever of from or
by him the said (V.) his heirs executors administrators or assigns
or any person or persons claiming by from through under or in
Covenants from trust for him or them And the said (P.) for himself his heirs
purchaser. executors and administrators doth hereby covenant with the
said (V.) his executors and administrators that he shall and will
within the space of months from the date of these pre-
sents fell hew and cut down the said oak ash and other trees
To clear away timber, &c. and draw and take them away with the boughs lops tops and
bark thereof And shall and will stock up around the body of
the tree at the distance of at least feet all the roots belong-
ing to the said trees for the purpose of clearing the ground
And also shall and will at his or their own costs and charges fill
Fill up saw- pits, &c. up all such saw pits as shall for the purposes aforesaid have been
made by him or them And also mend and repair all the hedges
and fences in and about the said lands in all such places as shall
be broken or otherwise damaged or destroyed in felling hewing
or carrying away the said timber (a) In witness &c.

Bargains and Sales of Goods.

Obs. 1. By the 29 Car. 2, c. 3, s. 17, no contract for the sale of any goods, wares and merchandizes, for the price of 10*l.* sterling or upwards, shall be allowed to be good, except the buyers shall accept part

(a) If the vendor be tenant in tail, see *supra*, sect. 2, and if it be so agreed, add, "And it is hereby further agreed and declared by and between the parties hereto that in case the said (V.) shall happen to die before the day of next ensuing and the said (P.) shall be prevented from felling and severing the said trees Then and in such case the executors or administrators of the said (V.) shall pay or allow unto the said (P.) his executors administrators or assigns the value of such or so many of the said trees as shall then remain unfelled and unsevered after the rate at which the same are hereby sold."

of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment; or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents lawfully thereunto authorized. This provision is extended by 9 Geo. 4, c. 14, s. 7, see *ante*, p. 78.

Of Goods.

2. A bargain and sale of goods, as a separate deed, is commonly called a Bill of Sale (see *Bill of Sale*); but a bargain and sale or assignment of fixtures is frequently inserted in leases, or the assignments of leases, see *Index to Precedents*.

BEQUESTS,

See *post*, WILLS.

BILLS.

BILL OF CREDIT,

See *post*, LETTERS.

BILLS OF LADING,

BILLS OF SALE OF SHIPS,

See *post*, SHIPPING.

BILLS OF SALE OF GOODS.

- | | |
|---|---|
| <p>1. <i>Form of a Bill of Sale.</i>
 <i>Absolute or Conditional.</i>
 <i>Effect of Possession or the Want of it.</i></p> <p>2. <i>Conditional Bills of Sale by way of Mortgage.</i>
 <i>What will pass by Bill of Sale.</i>
 <i>Power to seize future Property.</i>
 <i>Description of Property.</i>
 <i>Licence to take future Property.</i>
 <i>Contract in Equity as to future Property.</i></p> <p>3. <i>How affected by Bankruptcy.</i>
 <i>Fraudulent Assignment an act of Bankruptcy.</i>
 <i>Goods in Bankrupts' possession, &c.</i>
 <i>Trover, when not maintainable by Assignee.</i>
 <i>Right of Assignees in Bankruptcy notwithstanding Bill of Sale.</i>
 <i>Fixtures not in Bankrupts' order and disposition.</i>
 <i>Right of Mortgagee to marshal.</i>
 <i>Protected Transactions with Bankrupts.</i>
 <i>Goods assigned to Trustees.</i></p> | <p>4. <i>How affected by Statutes relating to Insolvent Debtors.</i></p> <p>5. <i>Registration of Bills of Sale.</i>
 <i>Bills of Sale void unless registered in Queen's Bench.</i>
 <i>Defeasances are to be written on same paper or parchment.</i>
 <i>Officer of Queen's Bench to keep Book containing particulars of.</i>
 <i>Officer entitled to Fee of 1s. for Filing.</i>
 <i>Office Copies, or Extracts of, to be given on payment of Fee.</i>
 <i>Satisfaction may be entered on.</i>
 <i>Interpretation of Terms used in the Act.</i>
 <i>What must be Registered.</i>
 <i>Description of Residence and Occupation of Grantor.</i>
 <i>Description of Witnesses to.</i>
 <i>When void against Creditors.</i></p> <p>6. <i>Stamp.</i></p> |
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Form of a bill of sale.

Absolute or conditional.

SECT. I. A bill of sale is, in its operation and form, precisely similar to a bargain and sale; but the bill of sale is of such things as do not savour of the realty, as goods, household furniture, &c. It may be either absolute, when the vendor wishes to convey the entire property to the vendee; or conditional, when the conveyance is subject to a condition for making the same void on payment of the money advanced upon the goods. When such a deed is executed, the property in the goods passes to the vendee by delivery of possession. But when it is made absolute to a person, not followed by delivery, a presumption of fraud arises, *Twyne's case*, 3 Rep. 80. The mere circumstance of possession of chattels, however familiar it may be to say that it proves fraud, amounts to no more than this, that it is *prima facie* evidence of property in the man possessing, until a title, not fraudulent, is shown under which that possession has followed; per Lord *Ellenborough*, 10 Ves. 145. The want of delivery of possession does not make a deed of sale of chattels absolutely void; it is only

evidence that the transfer was colorable. Where there is a want of possession, it is a question for a jury whether the bill of sale be fraudulent or not, *Martindale v. Booth*, 3 B. & Ad. 498. See 1 Smith's L. C. pp. 12, 13. A delivery of a single article in the name of the whole will not of itself give the purchaser such a possession as will profit him against creditors. Therefore, if an assignment be made of household furniture, and the assignor continues in possession, it is not protected against an execution at the suit of a creditor of the assignor, unless the assignment were notorious, *Armstrong v. Baldock*, Gow, 33; and see *Smith v. Russell*, 3 Taunt. 400. And it is not enough that a person is put in to keep possession jointly with the assignor, *Wordall v. Smith*, 1 Campb. 333. If the vendee suffers the late owner to interfere or exercise any act of ownership, it shall avoid the bill of sale as against a *bona fide* execution, *Paget v. Perchard*, 1 Esp. 205; for want of possession on a bill of sale is a notorious badge of fraud, which ought to be left to the jury, *Martin v. Podger*, 2 Bl. 702; *S. C.* 5 Burr. 2631. And a conveyance of chattels, unaccompanied with possession, is void, although in the same instrument be contained a valid mortgage of leasehold buildings, in which the chattels are situated, *Reed v. Blades*, 5 Taunt. 212. And to prove a bill of sale fraudulent, declarations made by the vendor at the time of executing it are admissible, but not those made at another time, *Phillips v. Eamer*, 1 Esp. 355; but a bill of sale made for a valuable consideration, unaccompanied with the possession, is valid against the vendor, and also against a creditor with whose knowledge and assent it was given, *Steel v. Brown*, 1 Taunt. 381.

2. Where the conveyance is not absolute to take effect immediately, as, for instance, where it is by way of mortgage, and the mortgagee is not to take possession until a default in payment of the mortgage money, there, as the nature of the transaction does not call for any transmutation of possession, the absence of such transmutation seems to be no evidence of fraud, 1 Smith's L. C. p. 13, 4th ed.; *Reed v. Wilmot*, 7 Bing. 583; *Reeves v. Capper*, 5 Bing. N. R. 136. Although non-transmutation of possession will not make a transaction fraudulent and void when consistent with the deed, the transaction is not protected by that circumstance, but is still open to be impeached by any other presumption or proof of fraud, *Riches v. Evans*, 9 C. & P. 640. In the case of *Martindale v. Booth*, 3 B. & A. 498, where A. being indebted to B. on the 8th of May, 1828, executed a bill of sale, whereby, in consideration of a further advance, he bargained and sold to B. all his (A.'s) household goods and furniture, &c. in and about the P. Tavern, with a proviso, that if A. should pay the money due and interest by instalments, the first of which was to be due on the 7th of June, the deed should be void; but in default of

Conditional bills of sale by way of mortgage.

Of Goods.

payment of any of the instalments at the times appointed, it should be lawful, although no advantage should have been taken of any previous default, for B. to enter upon the premises and take possession of the goods and sell them. The deed also contained the usual proviso, that, until such default, it shall be lawful for A. to retain possession of the premises. In November, 1828, two creditors of A., to whom in 1823 he had given a warrant of attorney as a security for a debt of 1,100*l.*, entered up judgment and sued out a *fi. fa.*, under which the sheriff seized the goods in question, it was held, in an action by B. against the sheriff, that the execution could not be sustained.

Lord *Tenterden*, C. J., observed, "The omission of the plaintiff to take possession of the goods was perfectly consistent with the deed, for it was stipulated that A. should continue in possession until default made in payment of all or any of the instalments, and on such default, it shall be lawful, although no advantage should have been taken of any previous default, for the plaintiff to enter and take possession of the household goods and furniture. The possession by A., therefore, being consistent with the deed, and it having been given in consideration of money advanced to enable A. to carry on his trade, I cannot say that it was absolutely void."

It has since been decided, that the continued possession of the mortgagor will not invalidate the assignment, even where the deed purports to be absolute, and does not contain any proviso for quiet enjoyment until default, *Cook v. Walker*, 25 L. T. 51; 3 W. R. 357.

What will pass
by bill of sale.

A grant of goods which are not in existence or which do not belong to the grantor at the time of executing the deed, is void, unless the grantor ratify the grant by some act done with that view, after he has acquired the property therein, *Lunn v. Thornton*, 1 C. B. 379; *Robinson v. McDonnell*, 5 Mau. & Selw. 228; *Gale v. Burnell*, 7 Q. B. 852.

Power to seize
future property.

Where the parties intend the deed to cover future property coming upon the premises, such intention should be clearly expressed. The power of entry to take the goods on default of payment, should be extended by express terms to all the goods found upon the premises at the time of enforcing such power, *Topfield v. Hillman*, 6 Scott, N. R. 967; *Petch v. Tutin*, 15 M. & W. 110.

Description of
property.

The tenant for years of a farm, being indebted to his landlord, assigned, by bill of sale, all the household goods and furniture, horses, cows, &c., and all the hay, corn and grain, as well in stock and in the barn and granary, as now standing, growing, and being upon the farm, &c., and all carts, waggons, &c., "and also all the tenant right and interest yet to come and unexpired" of the debtor, in trust to sell and pay the debt and the residue to the debtor; it was held, that under this assignment, the tenant's interest in crops grown in future years of the term passed to the landlord; it being considered im-

possible to give effect to the whole deed without holding that the "tenant right" included the way-going crop, *Petch v. Tutin*, 15 M. & W. 110; 15 L. J., N. S., Exch. 280; see *Grantham v. Hawley*, Hob. 132.

A bill of sale assigned to R. all the household goods and furniture of every kind and description whatsoever in the house, No. 2, Meadow Place, more particularly mentioned, and set forth in an inventory or schedule of even date therewith, and given up to R. on the execution thereof. At the time of the execution one chair was delivered to R. in the name of the whole of the goods. The inventory did not mention all the goods in the house; it was held, that no goods passed under the bill of sale except those specified in the inventory, *Wood v. Rowcliffe*, 6 Exch. 407; see *Morrell v. Fisher*, 4 Exch. 591.

By an assignment of looms on certain premises, "and other effects and things thereto belonging, more particularly set forth in the schedule," articles used therewith, having been upon the premises, were held to pass, although the looms only were mentioned in the schedule, *Cort v. Sagar*, 27 L. J., Exch. 378.

The intention to pass by deed the present and future property cannot be carried into effect by a mere transfer, but a licence for a grantee to enter upon the property and take other goods upon it may be effectual, and the licence, when acted on, will take effect independently of the transfer, *Hope v. Hayley*, 5 Ell. & Bl. 830; *Lunn v. Thornton*, 1 C. B. 379.

Licence to
take future
property.

The licence to seize future property may be defeated by the assignor's bankruptcy.

In 1852, a trader mortgaged to the plaintiff his machinery, stock-in-trade and effects then on the premises, as a security for money lent. The deed enabled the plaintiff, in default of payment of the sum secured, to seize and take possession of the property thereby assigned, and also any other goods and effects of the assignor which might be found on his premises. In January, 1855, he made an invalid assignment of all his effects to trustees for the benefit of his creditors. The plaintiff having afterwards sold, without notice of an act of bankruptcy, all the property of the bankrupt, including that specified in the mortgage deed, as well as after-acquired property; it was held, that he was entitled to that property only which was specified in his own mortgage deed. The power of the plaintiff to seize future property was a licence, and the conveyance by the bankrupt to the trustees operated as a revocation of that licence, *Carr v. Acraman*, 11 Exch. 566; 25 L. J., Exch. 90.

A subject to be acquired after the date of a contract, may in equity be claimed by a purchaser for value under such contract. A tenant, for example, contracts that particular things, which shall be on the

Contract as to
future property
binding in
equity.

Of Goods.

property when the term of his occupation expires, shall be the property of the lessor at a certain price, or at a price to be determined in a particular manner. This, in fact, is a contract to sell property not then belonging to the vendor, and a court of equity will enforce such contracts where they are founded on valuable consideration, and justice requires that the contract should be specifically performed, *Langton v. Horton*, 1 Hare, 556; *Curtis v. Auber*, 1 Jac. & W. 526.

By the 13 Eliz. c. 5, s. 2, bills of sale of goods and chattels made to the end, intent and purpose, to delay, hinder or defraud creditors of their lawful actions, debts, damages, &c., are void as against them. Bills of sale must be considered not only with reference to that act, but also to the provisions in the acts relating to bankrupts and insolvents, under which their assignees frequently have the power of defeating the claims of purchasers and mortgagees under bills of sale.

How affected
by bankruptcy.

3. Any fraudulent conveyance of goods or chattels, and any fraudulent gift, delivery or transfer of goods and chattels made by a trader liable to become bankrupt, with intent to defeat or delay his creditors, is an act of bankruptcy, 12 & 13 Vict. c. 106, s. 67; see *Shelford's Law of Bankruptcy*, pp. 89–95, 2nd ed.

A conveyance by a trader of goods, with a view to obtain *future advances*, is not necessarily, as a matter of law, an act of bankruptcy, though the whole of the trader's stock, present and future, is included in the conveyance. If the conveyance be *bond fide*, with a view to obtain advances for the purpose of carrying on the trade, it is not an act of bankruptcy, *Bittlestone v. Cooke*, 6 Ell. & Bl. 296; *Hutton v. Crutwell*, 1 Ell. & Bl. 15. Where such a conveyance is in part for a bygone debt, it is an act of bankruptcy, *Graham v. Chapman*, 12 C. B. 85; *Smith v. Cannan*, 2 Ell. & Bl. 35.

Goods in bank-
rupt's posses-
sion, &c., with
owner's con-
sent.

If any bankrupt, at the time he becomes bankrupt, shall, by the consent of the true owner thereof, have in his possession, order or disposition, any goods or chattels whereof he was reputed owner or whereof he had taken upon him the sale, alteration or disposition as owner, the Court of Bankruptcy has power to order the same to be sold and disposed of for the benefit of the creditors. There is an exception as to assignments of ships duly registered, 12 & 13 Vict. c. 112, s. 125.

The act 17 & 18 Vict. c. 36, for the registration of bills of sale (see *post*, p. 472), has in no degree affected the doctrine of reputed ownership, *Stansfield v. Cubitt*, 4 Jur., N. S. 395; 27 L. J., Ch. 266; 2 De G. & Jones, 222; *Re Daniel, Ex parte Ashby*, 25 L. T. 188.

Where goods are assigned as security for an advance of money, upon trust to permit the assignor to remain in possession of them until default in payment at the time stipulated, and upon further trust

to sell them upon such default being made, the assignee has a sufficient possession to enable him to maintain trespass against a wrong-doer. Such an assignment, though void as against creditors, is good between the parties, and as between either party and a stranger, *White v. Morris*, 11 C. B. 1015.

A., being indebted to B. by a bill of sale which was found to have been *bonâ fide* executed, conveyed to him all his stock-in-trade, household furniture, &c. absolutely. The bill of sale, which was under seal, contained a covenant by A. to pay the debt *on demand*, and a proviso for redemption on payment of the debt and interest *on demand*, and a further proviso that the assignor should continue in possession until default. The goods having been subsequently, and before any demand made by B., seized by the sheriff under a *fi. fa.*, upon a judgment entered up against A. on a warrant of attorney; it was held, that B. had not such a right of immediate possession as to enable him to maintain trover against the sheriff; for to entitle a party to maintain trover, he must have the right of possession as well as the property, in the goods sought to be recovered, *Bradley v. Copley*, 1 C. B. 685; *Gordon v. Harper*, 7 T. R. 9; see *Wheeler v. Montefiore*, 2 Q. B. 133.

Trover, when not maintainable by assignee.

A., by deed dated the 28th of September, 1845, conveyed certain goods to B., subject to a proviso, that he should pay B. the sum thereby secured on the 26th of March, 1850, or at such earlier day or time as B. should appoint, by giving A. fourteen days' notice, and should pay interest in the meantime half-yearly; the conveyance should be void. And it was thereby agreed between the parties, that until default should be made in the payment of the principal sum secured at the time therein specified, or the interest after fourteen days' notice, it should be lawful for A., his executors or administrators, to hold and enjoy the chattels. A. continued in possession of the chattels, according to the agreement, until the 13th of December, 1849, when he became bankrupt, when his assignees, the defendants, on the 19th of February, 1850, sold the whole of the chattels absolutely, and not merely the bankrupt's interest in them. No demand had been made on A. by B., or by the plaintiffs (the assignees of B.), for the principal money or interest in the meantime: it was held, first, that the deed did not give the mere possession and use of the goods to A. as bailee or tenant at will, but the right of possession and use for the term ending the 22nd of March, 1850, defeasible by non-payment of the principal or of the interest according to the terms of the deed; but, secondly, that the sale by the assignees of A., the bankrupt, destroyed the bailment; and, thirdly, that the sale by the assignees was equivalent to a sale by the bailee himself, and, consequently, that trover would lie by the assignees of the mortgagee against the assignees in bankruptcy of the mortgagor for the conversion by the

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sale of the goods during the term, *Fenn v. Bittleston*, 7 Exch. 152.

It has been said, that the last case leads to the inference, that the doctrine of reputed ownership applies only where the possession of the trust is *purely permissive*, so that his ownership is merely apparent, and that where he is in possession under an interest by virtue of which he is true, though only limited, owner, the doctrine in question has no application, and the assignees take no more than the limited interest vested in the bankrupt. See 2 Davidson's Conv., pp. 614, 615, note, 2nd ed. And it has been suggested, that until judicial authority has pronounced the doctrine based upon *Fenn v. Bittleston* to be incapable of support, that the draftsman called upon to prepare a bill of sale by way of mortgage of chattels will exercise a sound discretion by fixing the day of payment beyond what can reasonably be anticipated as the duration of the mortgage, or in the alternative, within a specified number of days after demand by the mortgagee, and inserting a proviso for quiet enjoyment until the end of such determinable term, or until default made in payment. *Ib.* p. 620, n.

By deed of sale, A. assigned all his household goods to secure a debt due from him to the assignee, subject to a proviso, that the deed should become void upon payment of the debt on a certain day, or on some earlier day to be appointed by the assignee, by a notice in writing, to be served on A. twenty-four hours before the day of payment so appointed, interest to be paid in the meantime. It was also agreed, that after default made in payment contrary to the proviso, it should be lawful for the assignee to enter and take possession of the goods, and to sell them, and reimburse himself out of the proceeds, accounting to A. for any surplus; and that until such default, it should be lawful for A. to hold, use and possess the goods, without hindrance from the assignee. The assignee served A. with a notice to pay on a day earlier than that named in the deed, and afterwards entered and took and sold the goods, but the notice was bad, having been served less than twenty-four hours before the day of payment appointed. It was held, that A. had under the deed the right of possession of the goods, defeasible only by default in payment after due notice, and that he might therefore sue the assignee in trespass for having wrongfully entered and sold, *Brierley v. Kendall*, 17 Q. B. 937; 21 L. J., Q. B. 161. It was held, also, that in such action the measure of damages should be not the value of the goods, but the value of A.'s interest in them at the time of the trespass. *Ib.*

Right of assignees in bankruptcy notwithstanding bill of sale.

A trader, by deed, assigned his goods by way of mortgage, subject to a proviso, that it should be lawful for him to make use of the goods until default in payment of the money secured after demand in writing. The mortgagee allowed the trader to continue in possession of

the goods until after his bankruptcy. It was held, that the goods were, at the time of the bankruptcy, in the order and disposition of the bankrupt, with the consent of the true owner, within the meaning of the 125th section, *Freshney v. Carrick*, 1 H. & N. 653. Trover having been brought against the assignees of a bankrupt, who had taken goods out of the possession of the plaintiff, they proved, that before the mortgage to the plaintiff the bankrupt had assigned goods included in the mortgage to the plaintiff to W., and that W., having allowed the goods to remain in the order and disposition of the bankrupt until after the date of the fiat, an order was made by the commissioners in bankruptcy for the sale of the goods under the 125th section of the 12 & 13 Vict. c. 106. It was held, that W. was the true owner, and that the assignees, having a good title as against the true owner, had a right as against the plaintiff to set up W.'s deed, and the title acquired by the plaintiff, by reason of the goods having been left by W. in the order and disposition of the bankrupt. *Ib.*

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Goods left in the possession of a trader at the time he becomes bankrupt, with the consent of the true owner, pass to his assignees under sect. 125 of the 12 & 13 Vict. c. 106, although before the bankruptcy the sheriff, under a *fieri facias* against the goods of the bankrupt, entered on the premises and stated that he took possession of the goods, but, in fact, left the bankrupt still apparently in possession of them, for the sheriff was not justified in seizing the goods, and therefore his assertion, that he took possession, had no effect in law, *Barrow v. Bell*, 5 Ell. & Bl. 540; 2 Jur., N. S. 159; 25 L. J., Q. B. 2.

A mortgagor of fixtures may be allowed to retain possession of them without prejudice to the mortgagee's security, as fixtures so far partake of the nature of real estate as not to be accounted goods and chattels which can be claimed by assignees in bankruptcy or insolvency under the provisions as to reputed ownership.

A., a publican, being indebted to B., deposited with him the lease of a public-house, accompanied by a memorandum expressly constituting B. equitable mortgagee of the leasehold premises and fixtures to the premises belonging. A. remained in possession of the premises and became a bankrupt. It was held, that the fixtures, consisting of ordinary house and trade fixtures, were not in the order and disposition of the bankrupt within the 125th section, but belonged to the mortgagee, *Ex parte Barclay*, 5 De G., M. & G. 403. The court understood the word fixtures to mean such things as are ordinarily affixed to the freehold for the convenience of the occupier, and which might be removed without material injury to the freehold, and the removal of which by a tenant would not give a ground of action to the landlord. *Ib.*

Fixtures not in bankrupt's order and disposition.

Traders mortgaged a leasehold factory to A., and subsequently by a

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bill of sale assigned all the machinery specified in a schedule to the latter, by way of mortgage, with a power of sale, and for enjoyment of the chattels until default in payment. Upon the bankruptcy of the traders, who had been allowed to retain the possession of the machinery, it was held, that the moveable machinery passed to the assignees as being within the order and disposition of the bankrupts; but that the machinery fixed to the freehold, constituting what are usually called "trade fixtures," did not, though mortgaged separately by the bill of sale, *Whitmore v. Empson*, 23 Beav. 313. See *Horn v. Baker*, 9 East, 215; *Mather v. Fraser*, 2 Kay & J. 536; *Ex parte Sykes*, 18 L. J., Bank. 167; 13 Jur. 486.

Right of
mortgagee to
marshal.

The mortgagee of personal chattels has been held entitled to the benefit of marshalling. Where a landlord distrained for rent upon goods of a bankrupt, comprised in a bill of sale, and others not so comprised, it was held, that the mortgagee was entitled to stand in the place of the landlord, and to be paid the amount of his mortgage debt out of the proceeds of the sale of the goods taken under the distress, which were not comprised in the security, *Ex parte Stephenson*, 1 De G. 586.

There is nothing illegal or contrary to the policy of the bankrupt laws in a stipulation by the assignors on an assignment of goods under which they are to remain in his possession, not to do any act by means of which the goods assigned might become charged or alienated, or whereby the assignment might become ineffective, or the assignor might be deprived of them, *Hill v. Cowdery*, 1 H. & N. 360; 25 L. J., Exch. 285.

Protected
transactions
with bank-
rupts.

All conveyances by any bankrupt *bonâ fide* executed before the filing of a petition for adjudication of bankruptcy, and all contracts, dealings, and transactions by and with any bankrupt *bonâ fide* made before the filing of such petition, and all executions against the goods and chattels of any bankrupt *bonâ fide* executed by seizure and sale, before the filing of such petition, are valid, notwithstanding any prior act of bankruptcy; provided the party relying on such contracts, &c., had not notice of a prior act of bankruptcy, and the transaction is not a fraudulent preference, 12 & 13 Vict. c. 106, s. 133.

The taking of goods by the true owner out of the "possession, order, or disposition" of a bankrupt, after a secret act of bankruptcy, but before the date of the fiat, or the filing of the petition, is a "dealing or transaction" with the bankrupt, within the protection of 12 & 13 Vict. c. 106, s. 133, *Graham v. Furber*, 14 C. B. 134; *Brewin v. Short*, 5 Ell. & Bl. 227. See other cases on this subject, *Shelford on Bankruptcy*, pp. 179, 180, 2nd ed.

Goods assigned
to trustees.

Where household furniture and goods are assigned to trustees previously to marriage, for the separate use of the wife, independently of the husband, who afterwards becomes a bankrupt, such furniture and

goods will not pass to the assignees, as being in the bankrupt's possession, the trustees, in such a case, being considered as the true owners, and not to have assented, *Jarman v. Woolleton*, 3 T. R. 618; *Haselinton v. Gill*, 1b. 620; *Simmons v. Edcards*, 16 M. & W. 838; *Cadogan v. Kennett*, Cowp. 432.

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The statutes relating to insolvent debtors contain enactments corresponding with the clause as to reputed ownership in the bankrupt act, for the purpose of vesting in the assignee of an insolvent, property whereof the insolvent was reputed owner, 1 & 2 Vict. c. 110, s. 57; 7 & 8 Vict. c. 96, s. 17. The same statutes make void assignments by an insolvent of any goods or effects for giving a voluntary preference to creditors, but *not* such as are made prior to three months before the filing of the insolvent's petition, unless it be with the view of petitioning the court, 1 & 2 Vict. c. 110, s. 59; 7 & 8 Vict. c. 96, s. 19.

How affected
by statutes
relating to in-
solvent debtors.

By the same acts the grantee of any bill of sale, whether for a valuable consideration or otherwise, cannot, after the commencement of the insolvent's imprisonment, or after the filing of his petition for protection, avail himself of such bill of sale, by seizure and sale of the insolvent's property, 1 & 2 Vict. c. 110, s. 61; 7 & 8 Vict. c. 96, s. 21. These provisions do not apply to a person who has become absolute owner under a bill of sale, before the insolvent's imprisonment, or petition for protection, *Hunt v. Robins*. 2 Gale & D. 652; *Hardey v. Tingey*, 19 L. J., Exch. 233; *Simpson v. Wood*, 7 Exch. 349. See Shelford on Insolvency, pp. 68, 69, 203, 204.

A. B., by deed, in consideration of certain prior advances and of a certain sum agreed to be advanced, bargained, sold and assigned all his household furniture and other personal effects to the defendant, to hold absolutely as his own property, with a proviso that if A. B. should pay the money due on a day therein named the deed should be void. The deed further provided, that on default made in payment on the day named, the defendant should take possession, hold and enjoy the property, and should, at his discretion, sell and retain the proceeds in trust to pay himself the sums due, and the surplus, if any, to A. B. A. B. made default in payment on the day specified, and the defendant took possession of the goods. A. B. afterwards filed his petition for protection under the 7 & 8 Vict. c. 96, and the defendant, after A. B. had filed his petition, sold the goods included in the deed; it was held, in an action by the assignees of A. B. against the defendant for the proceeds of the sale, that as the bill of sale was absolute before the filing of the petition, the defendant had not availed himself of it under the 7 & 8 Vict. c. 96, s. 21, by the sale after the filing of the petition, and, therefore, that the assignees were not entitled to recover, *Simpson v. Wood*, 7 Exch. 349; 25 L. J., Exch. 152.

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After some growing crops had been seized and taken possession of under a bill of sale, but before the sale of them, a *fi. fa.* on a judgment of another creditor of the vendor, was delivered to the sheriff, who seized and sold the crops and paid the proceeds to the execution creditor. The debtor subsequently became insolvent, and petitioned the Insolvent Debtors' Court for protection under the 7 & 8 Viet. c. 96, but his assignees withdrew from contesting the right of the vendee of the bill of sale; it was held, that the vendee of the bill of sale was entitled to the proceeds of the crops as against the execution creditor, and that it would have made no difference in this respect if the assignees had not withdrawn, *Congreve v. Ecetts*, 10 Exch. 298; 18 Jur. 655; 23 L. J., Exch. 273.

Registration
of bills of sale.

The stat. 17 & 18 Viet. c. 36, recites that "frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors," and enacts as follows:

Bills of sale to be void, unless the same or a copy thereof be filed within twenty-one days, in like manner as warrants of attorney.

Every bill of sale of personal chattels made after the passing of the act (10th July, 1854), either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale, or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same (*a*), or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench, within twenty-one days after the making or giving of such bill of sale (in like manner as a warrant of attorney in any personal action given by a trader, is now by law required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all

(a) See form of affidavit, *ante*, p. 50.

sheriffs' officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorizing the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made, and against every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale, which at or after the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or of the execution by the debtor of such assignment for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of twenty-one days, shall be in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given, as the case may be, 17 & 18 Vict. c. 36, s. 1.

If such bill of sale shall be made or given subject to any defeasance or condition or declaration of trust not contained in the body thereof, such defeasance or condition or declaration of trust shall, for the purposes of this act, be taken as part of such bill of sale, and shall be written on the same paper or parchment on which such bill of sale shall be written, before the time when the same or a copy thereof respectively shall be filed, otherwise such bill of sale shall be null and void to all intents and purposes, as against the same persons and as regards the same property and effects, as if such bill of sale or a copy thereof had not been filed according to the provisions of the act, *Ib.* sect. 2.

The said officer of the said Court of Queen's Bench shall cause every bill of sale, and every such schedule and inventory as aforesaid, and every such copy filed in his said office under the provisions of the act, to be numbered, and shall keep a book or books in his said office, in which he shall cause to be fairly entered an alphabetical list of every such bill of sale, containing therein the name, addition, and description of the person making or giving the same, or in case the same shall be made or given by any person under or in the execution of process as aforesaid, then the name, addition, and description of the person against whom such process shall have issued, and also of the person to whom or in whose favour the same shall have been given, together with the number, and the dates of the execution and filing of the same, and the sum for which the same has been given, and the time or times (if any) when the same is thereby made payable, according to the form contained in the schedule to this act, which said book or books, and every bill of sale or copy thereof filed in the said office, may be searched and viewed by all persons at all reasonable times, paying to the officer for every search against one person

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Defeasance or condition of every bill of sale to be written on the same paper or parchment.

Officer of court to keep a book containing particulars of each bill of sale.

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the sum of sixpence and no more; and that, in addition to the last-mentioned book, the said officer of the said Court of Queen's Bench shall keep another book or index, in which he shall cause to be fairly inserted, as and when such bills of sale are filed in manner aforesaid, the name, addition, and description of the person making or giving the same, or of the person against whom such process shall have issued (as the case may be), and also of the persons to whom or in whose favour the same shall have been given, but containing no further particulars thereof; which last-mentioned book or index all persons shall be permitted to search for themselves, paying to the officer for such last-mentioned search the sum of one shilling, *Ib.* sect. 3.

Officer entitled to a fee of 1s. for filing bill of sale, and to account for the same.

The said officer shall be entitled to receive, for his trouble in filing and entering every such bill of sale or a copy thereof as aforesaid, the sum of one shilling and no more; and such officer shall render a like account to the Treasury, as is provided by 13 & 14 Vict. c. 75, with respect to the officers of the Court of Common Pleas therein mentioned, *Ib.* sect. 4.

Office copies or extracts to be given on paying as for copies of judgments.

Any person shall be entitled to have an office copy or an extract of every bill of sale, or of the copy thereof filed as aforesaid, upon paying for the same at the like rate as for office copies of judgments in the said Court of Queen's Bench, *Ib.* sect. 5.

Satisfaction may be entered.

Any judge of the Court of Queen's Bench may order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid, if it shall appear to him that the debt (if any) for which such bill of sale is given as security shall have been satisfied or discharged, *Ib.* sect. 6(a).

Interpretation of terms.

In construing the act, the following words and expressions shall have the meanings thereby assigned to them, unless there be something in the subject or context repugnant to such constructions; (that is to say,)—The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for

Meaning of "bill of sale."

Documents excepted from the act.

any debt, but shall not include the following documents; (that is to say,) assignments for the benefit of the creditors of the person making or giving the same; marriage settlements; transfers or assignments of any ship or vessel or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts or at sea; bills of lading; India warrants; warehouse keepers' certificates; warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the

(a) See Form of Affidavit for Order to enter Satisfaction, *ante*, p. 51.

possessor of such document to transfer or receive goods thereby represented. The expression "personal chattels" shall mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of any incorporated or joint stock company, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale. Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale, so long as they shall remain or be in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person, *Ib.* sect. 7.

Of Goods.
Personal chattels.

Apparent possession.

Extent of act.

Schedule.

Name, &c. of the Person making or giving the Bill of Sale, or of the Person divested of Property.	Name, &c. of the Person to whom made or given.	Whether Bill of Sale, Assignment, Transfer, or what other Assurance, and whether absolute or conditional, and Number.	Date of Execution.	Date of Filing.	Sum for which made or given.	When and how payable.

It is necessary to register a bill of sale of machinery affixed to the premises only for the purposes of trade, and which is treated as property which the assignor had a right to sell distinct from the land, *Waterfall v. Penistone*, 6 Ell. & Bl. 876; 3 Jur., N. S. 15; 26 L. J., Q. B. 100; see *Hellawell v. Eastwood*, 6 Exch. 295. A mortgage of trade fixtures, together with the freehold, by the owner of the freehold, which fixtures are attached to the freehold so as to form part of the soil, need not be registered under the act, *Mather v. Fraser*, 2 Kay & J. 536; 2 Jur., N. S. 900; 25 L. J., Ch. 361.

What must be registered.

The object of the Bills of Sales Act (17 & 18 Vict. c. 36) is to give Description of grantor.

(a) There is a similar act for Ireland, 17 & 18 Vict. c. 55.

Of Goods.

the assignee and creditor a true idea of the position in life of the assignor; and therefore a misdescription or the absence of a true description in regard to his occupation, is substantial, and invalidates the transaction, *Allen v. Thompson*, 1 H. & N. 15; 2 Jur., N. S. 451; 25 L. J., Exch. 249. A bill of sale, filed in accordance with the provisions of that statute, purported to be given by A. B. of a certain place, "gentleman," and was given in respect of the furniture of his house there. It appearing that the assignor carried on no business at that place, but was a clerk in the Audit Office; it was held, that "gentleman" was a misdescription of the party which vitiated the bill of sale, *Ib.* A bill of sale which was filed, contained a description of the residence and occupation, but the affidavit of the time of the execution of the bill of sale, which was filed with it, did not contain such description; it was held, that the bill of sale was void, upon the ground of non-compliance with the first section of the act, *Hatton v. English*, 7 Ell. & Bl. 94; 3 Jur., N. S. 294, n.; 26 L. J., Q. B. 161. It is not sufficient that a bill of sale which is filed itself, contains a description of the residence and occupation of the grantor, *Ib.*

Description of
witnesses to.

In registering a bill of sale under the act, the affidavit purported to be made by A. B. of such a description, who was also the attesting witness to the bill of sale; but the affidavit did not contain any further allegation of the residence and occupation of the attesting witness; it was held sufficient, *Allen v. Thompson, supra.* There must be a sufficient description of every attesting witness to a bill of sale under the act, *Bath v. Sutton*, 27 L. J., Exch. 388; *Tuton v. Samoner*, 27 L. J., Exch. 293; *ante*, p. 50, n. (a).

The description, W. R. C. of King's Bench Walk, Inner Temple, in the city of London, clerk to Messrs. B. & R. of the same place, solicitors, though it is not the place where the witness sleeps, is sufficient, *Blackwell v. England*, 3 Jur., N. S. 1302, Q. B., S. P. *Attenborough v. Thompson*, 3 Jur., N. S. 1307; 27 L. J., Exch. 23.

When void
against cre-
ditors.

Under this act a bill of sale is void against creditors, unless a description of the residence and occupation of the person granting it be filed along with the bill of sale. It is not sufficient that the bill of sale which is filed contains a description of his residence and occupation, *Hatton v. English*, 7 Ell. & Bl. 94.

Under the act, where the occupation of a party, or the witness of a bill of sale, is not stated, the onus of proving that such party or witness has an occupation, lies on the party seeking to impeach the bill of sale on that ground, *Sutton v. Bath*, 3 H. & N. 382.

In an interpleader issue between a claimant under a *bonâ fide* bill of sale duly registered, and an execution creditor of the assignor, the latter cannot set up a prior bill of sale to a third party also *bonâ fide*, but void as against execution creditors for want of due registration

under the act, *Edwards v. English*, 3 Jur., N. S. 934; 26 L. J., *Of Goods*. Q. B. 193; 7 Ell. & Bl. 564.

A. assigned goods by bill of sale to B.; by a second bill of sale, A. assigned the same goods to C. A. having become bankrupt, and the first bill of sale not having been duly registered under the act, A.'s assignees brought an action of trover against B. for the goods; it was held, that B. could not set up the bill of sale to C. against the assignees, *Nicholson v. Cooper*, 3 H. & N. 384.

Bills of sale are not void for want of registration as between the parties, but only as against creditors, *Hills v. Shepherd*, 1 F. & F. 191; *Barker v. Aston*, *Ib.* 192.

An absolute bill of sale is charged as a conveyance with an *ad Stamp. ratorem* stamp on the consideration money, see PURCHASE DEEDS. A conditional bill of sale to secure money is liable to the same stamp duty as a mortgage, see MORTGAGE; *Barker v. Aston*, *supra*; *Baker v. Dale*, 1 F. & F. 271.

Assignments of Bills of Sale, see *ante*, ASSIGNMENT, pp. 358, 359.

No. CCXXIV.

Absolute Bill of Sale.

No. CCXXIV.

*Absolute
Bill of Sale.*

Know &c. that I (*Vendor*) of &c. in consideration of the sum of £ to me in hand paid by (*Purchaser*) of &c. at &c. the receipt whereof I do hereby acknowledge *Do* hereby grant bargain and sell unto the said (*P.*) all and singular household furniture goods chattels and effects comprised and mentioned in the schedule hereunto annexed and the advantages thereof and all the right title interest property claim and demand of me the said (*V.*) in to out of and upon the said premises and every part thereof *To have and to hold* receive and take all and singular the said premises hereby bargained and sold or intended so to be unto the said (*P.*) his executors administrators and assigns absolutely for his and their own use *And* I the said (*V.*) do hereby for myself my heirs executors and administrators covenant with the said (*P.*) his executors administrators and assigns That I the said (*V.*) now have good right and absolute authority by these presents to assign the several premises hereby assigned or intended so to be unto the said (*P.*) his executors administrators and assigns in manner aforesaid *And* that I my executors and administrators and all persons claiming under me and

Grant.

Habendum.

Covenants.

No. CCXXIV. them will at any time hereafter at the request and at the cost of the said (P.) his executors administrators or assigns do and execute all such acts and assurances for more effectually assuring the premises hereby assigned or intended so to be unto the said (P.) his executors administrators and assigns and for placing him and them in possession of the same in manner aforesaid and according to the true intent and meaning of these presents as by him or them or his or their counsel in the law shall be decreed or advised and required *In witness &c.*

A. B. (*vendtor*) [Seal]

Signed sealed and delivered by the within named [*or* “above named” *as the case may be*] (V.) being first duly stamped and at the same time full possession of all and singular the goods chattels and effects within mentioned [*or* “above mentioned”] to be bargained and sold were given by the said (V.) to the said (P.) in the presence of C. D.

Or Delivery of Possession may be indorsed thus.

We do hereby declare that (“on the day of ”) absolute possession of the household goods chattels and effects within mentioned was delivered by the said (V.) to the said (P.) in the presence of us whose names are hereunder written.

(Signed) A. B.
C. D.

No. CCXXV.

Conditional Bill of Sale of Goods and Merchandize.

No. CCXXV.

*Conditional
Bill of Sale.*

Testatum.

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part *Witnesseth* That in consideration of the sum of £ paid by the said C. D. to the said A. B. the receipt whereof &c. He the said A. B. *Doth* hereby grant bargain sell and confirm unto the said C. D. his executors administrators and assigns *All those* &c. [*here name the goods and merchandize*] *To have and to hold* the said goods and merchandize and all and singular other the premises hereby bargained and sold or intended so to be unto the said C. D. his executors administrators and assigns *Provided always* and it is hereby agreed by and between the said parties to these presents That if the said A. B. his executors administrators

Habendum.

Proviso for
redemption.

or assigns shall pay or cause to be paid unto the said C. D. his executors administrators or assigns the sum of £ on the day of for the redemption of the said hereby bargained goods Then these presents and every thing herein contained shall cease and be void And the said A. B. doth hereby for himself his executors administrators and assigns covenant and grant with and to the said C. D. his executors &c. in manner following (that is to say) That he the said A. B. his executors or administrators will pay or cause to be paid to the said C. D. his executors administrators or assigns the said sum of £ at the time and in the manner aforesaid And in case default shall happen to be made in payment of the said sum of £ or any part thereof on the said day of according to the true intent and meaning of these presents Then the said C. D. his executors administrators and assigns shall and may peaceably and quietly have receive and enjoy to his and their own proper and absolute use and behoof for ever the said hereby bargained goods and premises and every part thereof with all and singular the appurtenances without any lawful let suit trouble molestation or denial of the said A. B. his executors or administrators or any other person or persons claiming under him or them [*Covenant for further Assurance may be added, see ante, p. 477*] And the said C. D. for himself his executors and administrators doth hereby covenant with the said A. B. his executors and administrators that he the said C. D. his executors or administrators shall and will immediately after the receipt of the said sum of £ according to the true intent and meaning of the condition aforesaid and upon the request of the said A. B. his executors or administrators well and truly deliver unto the said A. B. his &c. the said goods in as good plight and condition [fire and other inevitable accidents excepted] as the same and every of them at this present time now are Signed sealed and delivered &c. [*see last precedent.*]

No. CCXXV.

*Conditional
Bill of Sale.*Covenant to
pay, &c.Covenant to
redeliver goods
upon payment.

No. CCXXVI.

*Bill of Sale, by way of Mortgage of Furniture and
Stock in Trade.*

No. CCXXVI.

*By way of
Mortgage.*

*This Indenture made &c. Between A. of &c. (innkeeper) of the
one part and B. of &c. (maltster) of the other part Whereas the*

No. CCXXVI. sum of £ is now due and owing to the said B. by the said A. for money lent and goods sold and delivered *And*
By way of Mortgage. *whereas* the said A. hath applied to the said B. to advance and lend him the sum of £ which he has agreed to do upon having the same as well as the said sum of £ making together the sum of £ secured to him by way of mortgage and assignment in manner hereinafter mentioned *Now this Indenture witnesseth* That in pursuance of the said agreement and also in consideration of the sum of £ so due and owing as aforesaid and of the sum of £ in hand now paid by the said B. to the said A. the receipt whereof is hereby acknowledged making together the sum of £ and in order to secure the repayment thereof he the said A. *Doth* by these presents grant bargain sell and assign unto the said B. his executors administrators and assigns all the household furniture fixtures and household effects of the said A. *And also* all horses flies carriages brewing utensils stock of beer spirits hops and all other his household furniture stock in trade goods and chattels in upon and about the inn and premises called the Tavern Inn and more particularly described and set forth in the schedule hereunder written *And* all the right title interest property claim and demand whatsoever of the said A. in and to the household furniture and other goods and chattels hereby assigned or intended so to be Together with full power and authority for the said B. his executors administrators and assigns and his their and every of their bailiffs servants and agents from time to time during the continuance of this security to enter into and upon the aforesaid inn or public house and land or any other dwelling house public house shop land or place hereafter to be occupied by the said A. or by his executors or administrators in that capacity and to take an inventory valuation or account of the aforesaid goods chattels effects and premises or of any other goods chattels and effects belonging to the said A. his executors or administrators in that capacity *To have and to hold* receive and take the said household furniture stock in trade horses flies goods and chattels unto the said B. his executors administrators and assigns subject nevertheless to the conditions hereinafter contained *Provided always* and these presents are upon the express condition That if the said A. his heirs executors administrators or assigns do and shall on demand for that purpose made to the said A. his executors or administrators by or on the part of the said B. his executors administrators or assigns pay or

Testatum.

Assignment of chattels.

Power to enter to make inventory.

Habendum.

Proviso for redemption.

cause to be paid to the said B. his executors administrators or assigns the said sum of £ and interest for the same in the meantime after the rate of £5 per cent. for every £100 by the year without any deduction or abatement whatsoever *That* then these presents and every clause article and thing herein contained shall cease and be void or else shall remain in full force and virtue *And it is hereby agreed and declared* That each demand as aforesaid may be made upon or against the said A. his executors or administrators either personally or by delivering a notice in that behalf for or on behalf of the said B. his executors administrators or assigns at the dwelling house or place of abode for the time being of the said A. his executors or administrators *And* the said A. doth hereby for himself his heirs executors and administrators covenant with the said B. his executors administrators and assigns *That* he the said A. his heirs executors or administrators will immediately upon demand being made as aforesaid pay or cause to be paid unto the said B. his executors administrators and assigns the sum of £ sterling with interest thereon after the rate aforesaid to be computed from the day of the date of these presents up to and inclusive of the day of the payment of the principal sum hereby secured without any deduction or abatement whatsoever [except income tax] *And further* That he the said A. now hath in himself good right and absolute authority to assign the premises hereby assigned or intended so to be in manner aforesaid *And* that he the said A. his executors or administrators shall not at any time while any money shall remain due on this security do or allow any act or deed whereby the said premises shall or may be charged or prejudicially affected *And further* That in case at any time during the continuance of this security any part or portion of the household furniture stock in trade horses flies goods and chattels shall be sold or exchanged in the ordinary way of business then that such household furniture stock in trade horses flies goods and chattels as shall be substituted for those so sold or exchanged and in the ostensible and reputed ownership of the said A. his executors or administrators shall be and remain from time to time as often as the same shall happen upon trust for sale and subject to the other trusts herein contained to all intents and purposes whatsoever *And further* That he the said A. his executors or administrators and every person lawfully or equitably claiming any right title or interest in or to the premises comprised in this

No. CCXXVI.

By way of
Mortgage.How demand
to be made.Covenant to
pay.Right to assign,
&c.To subject
future property.Further as-
surance.

No. CCXXVI. security will at all times hereafter at the cost of the said A. his executors or administrators until sale and afterwards at the cost of the person or persons requiring the same execute and do any act deed or thing for the further better or more effectually assuring all or any of the premises comprised in this security unto the said B. his executors administrators and assigns and for enabling him and them to obtain possession of and quietly enjoy the same as by him or them or his or their counsel in the law shall be reasonably devised or advised and required *Provided nevertheless* and it is hereby agreed and declared by and between the said parties hereto That if the said A. his heirs executors or administrators shall not pay unto the said B. his executors administrators or assigns the said principal sum of £ and interest or any part thereof respectively on demand as aforesaid it shall be lawful for the said B. his executors administrators or assigns immediately upon such default or non-payment or at any time thereafter without any further authority than is herein contained absolutely to sell and dispose of all and every or any of the said goods chattels effects and premises hereby assigned or comprised in this security either by public auction or by private contract and either together or in parcels for as much money as can be reasonably obtained for the same with full power to buy in and afterwards to resell the same without being answerable for consequential loss *And* in order to enable the said B. his executors administrators and assigns more effectually to seize and take possession of all and singular the aforesaid goods chattels effects and premises and to sell and dispose of the same he the said A. *Doth* hereby give and grant unto the said B. his executors administrators and assigns and his and their bailiffs servants and agents full and free liberty power and authority from time to time after default in payment of the aforesaid sum of £ and interest or any part thereof in manner aforesaid to enter into and upon the aforesaid inn or public house land and premises or any other dwelling house public house shop land or other place or places hereafter to be occupied by him the said A. or by his executors or administrators in that capacity and to seize and take possession of such goods chattels effects and premises and sell and dispose thereof either at the place where found or at any other place or places without any hindrance interruption or denial from or by the said A. or any other person or persons whatsoever and without being liable to any action of trespass or

*By way of
Mortgage.*

Power of sale.

Power to take
possession.

other legal proceeding for so doing *And* it is hereby further agreed and declared that the receipt or receipts in writing of the said B. his executors administrators or assigns for any money to arise from the aforesaid sale or sales or otherwise payable to them or him by virtue hereof shall effectually exonerate the person or persons to whom the same shall be given from being obliged to see to the application of the money therein respectively acknowledged to be received or to inquire whether any money be owing on this security or whether any such demand has been made as aforesaid or any default of payment made as aforesaid or otherwise into the necessity or propriety of any such sale or sales *And* it is hereby further agreed and declared that the said B. his executors administrators or assigns shall stand and be possessed of the monies to arise from the aforesaid sale or sales and of all other monies if any which may come to his or their or any of their hands by virtue hereof *Upon trust* in the first place by with and out of the same monies to reimburse himself or themselves or pay or discharge all the costs and expenses incurred in or about the said sale or sales or the trusts and powers herein contained *And* in the next place to apply such monies in or towards satisfaction of all the monies for the time being due or owing on the security of these presents including such money (if any) as shall be owing to the said B. his executors administrators or assigns for effecting or keeping on foot any insurance against loss or damage by fire under the provision in that behalf hereinafter contained and then to pay the surplus (if any) unto the said A. his executors administrators or assigns *And* the said A. *Doth* hereby for himself his heirs executors and administrators further covenant with the said B. his executors administrators and assigns that he the said A. his executors or administrators will during the continuance of the present security keep all the goods chattels and effects hereby assigned or intended so to be insured against loss or damage by fire in the sum of £ at the least and will punctually pay all premiums and sums of money necessary for such purpose and will at any time on demand produce to the said B. his executors administrators or assigns the policy or policies of such insurance and the receipt for every such payment *And also* that if default shall be made in keeping the said premises so insured it shall be lawful for but not obligatory upon the said B. his executors administrators or assigns to insure or keep insured all or any part of the said premises in any

No. CCXXVI.

*By way of
Mortgage.*Receipts of
mortgagee to
be sufficient.Trusts declared
of the money.Covenant to
insure against
fire.

No. CCXXVI. sum not exceeding the sum of £ and that the said A. his heirs executors or administrators will repay to the said B. his executors administrators or assigns every sum of money expended for that purpose by him or them with interest thereon at the rate aforesaid from the time of the same respectively having been so expended and that until such repayment the same shall be a charge upon the premises hereby assigned or intended so to be *And* it is hereby agreed and declared that all such sum or sums of money as shall during this present security be received or recovered under or by virtue of the policy or policies by which the said premises shall be insured as aforesaid shall be applied in or towards payment and satisfaction of the principal monies and interest for the time being due and owing on this security *Provided always* and it is hereby agreed and declared that until default shall be made in payment of the said principal sum of £ and interest or any part thereof respectively contrary to the proviso and covenant hereinbefore contained for the payment thereof it shall be lawful for the said A. his executors and administrators to hold make use of possess and enjoy all and singular the said goods chattels effects and premises without any hindrance denial or interruption from or by the said B. his executors administrators or assigns or any person or persons claiming or to claim under him them or any of them. *In witness &c.*

Proviso for
enjoyment
until default.

The Schedule to which the above written indenture refers.



No.
CCXXVII.
Goods in Shop.

No. CCXXVII.

Short Bill of Sale to secure an antecedent Debt.

This Indenture is made on the day of in the year of our Lord 18 Between (A.) of &c. (*mortgagor*) of the one part and (B.) of &c. (*mortgagee*) of the other part *Whereas* the said (*mortgagor*) is indebted unto the said (*mortgagee*) in the sum of £ for goods sold and delivered and the said (*mortgagee*) hath required payment of or security for the said sum and the said (*mortgagor*) not being at present prepared to pay the same hath therefore agreed to give such security for the same sum with interest thereon as is hereinafter expressed *Now this Indenture witnesseth* That in consideration of the covenant hereinafter contained on the part of the said (*mortgagee*) and for the better securing to him the payment of the

Recital of debt.

Testatum.

sum of £ and interest thereon as hereinafter mentioned
He the said (*mortgagor*) doth by these presents grant bargain
sell and assign unto the said (*mortgagee*) his executors admin-
istrators and assigns *All* and every the goods utensils imple-
ments and things which are now in about and belonging to the
messuage and shop situate and being in Street in the
parish of in the county of now in the occupation of
the said (*mortgagor*) and which are particularly mentioned enu-
merated and described in the schedule hereunder written and all
the right title interest property claim and demand of the said
(*mortgagor*) in and to the said goods chattels and premises and
every part and parcel thereof Together with full power and Power of entry.
authority for the said (*mortgagee*) his executors administrators
and assigns or any of them or his their or any of their servants
agents and others to enter into and upon the said dwelling house
shop and premises or any other dwelling house shop or premises
for the time being occupied by the said (*mortgagor*) in or upon
which any property comprised in this security shall be or shall
be supposed to be and to stay therein and thereon and return
therefrom to inspect and take an inventory or inventories of the
property and effects hereby assigned or intended so to be at his
or their or any of their own free will and pleasure until pay-
ment shall be made of the said sum of £ and interest
thereon *To have* hold receive and take the said goods chattels Habendum.
and premises hereby assigned or expressed and intended so
to be unto the said (*mortgagee*) his executors administrators
and assigns as his and their own property and effects *Pro-* Proviso for
vided nevertheless and it is hereby agreed and declared by redemption.
and between the said parties to these presents that in case the
said (*mortgagor*) his executors or administrators shall and do
well and truly pay or cause to be paid unto the said (*mortgagee*)
his executors administrators or assigns the said sum of £
with interest thereon at the rate of five pounds per centum per
annum on the day of one thousand eight hundred
and or at such earlier day or time as the said (*mortgagee*)
his executors administrators or assigns shall appoint for the
payment thereof in and by a notice in writing to be given by
him or them to the said (*mortgagor*) his executors or adminis-
trators or left at his or their last or usual place of abode at least
one calendar month before the day or time so to be appointed
for payment as aforesaid Then and in such case these presents
and every article clause and thing herein contained shall cease

No.
CCXXVII.
Goods in Shop.

No.
CCXXVII.
Goods in Shop.

Power to take
possession
after default

To sell goods
and pay debt,
&c.

Quiet enjoy-
ment until
default.

determine and be absolutely void or else shall remain in full force
And it is hereby also agreed and declared by and between the
 said parties to these presents that after default shall be made
 by the said (*mortgagor*) his executors or administrators in pay-
 ment of the said sum of £ and interest or any part
 thereof contrary to the tenor and effect of the before mentioned
 proviso then and in such case it shall be lawful for the said
 (*mortgagee*) his executors administrators or assigns peaceably
 and quietly to receive and take into his and their possession
 and thenceforth to hold and enjoy all and every the goods
 chattels and premises hereby assigned or intended so to be and
 any other goods chattels and effects belonging to the said
 (*mortgagor*) which for the time being shall during this security
 be in or upon the said messuage shop and premises or any other
 messuage shop or premises for the time being in the occupation
 of the said (*mortgagor*) *And also* to sell and dispose of all and
 every the said goods and chattels or any parts thereof for such
 price or prices as can be reasonably had or gotten for the same
 and to receive and take and give effectual discharges for the
 monies to arise by such sale thereof and thereby and therewith
 in the first place to retain and to reimburse himself and them-
 selves the said (*mortgagee*) his executors administrators or
 assigns all costs charges and expenses which he or they may
 incur or be put unto in and about making any such sale or sales
 and also in and about the receipt and recovery of the said sum
 of £ and interest respectively and in the next place to
 retain and to reimburse himself and themselves the said (*mort-*
gagee) his executors administrators or assigns the said sum of
 £ and the interest thereon or so much and such part
 thereof as shall then remain unpaid and unsatisfied and from
 and after full payment and satisfaction of such costs charges and
 expenses sum and sums of money as aforesaid to render to and
 account for the surplus (if any) of the money arising from such
 sale or sales as aforesaid unto the said (*mortgagor*) his executors
 or administrators *And* it is hereby declared and agreed by and
 between the said parties to these presents that until default shall
 happen to be made in payment of the said principal sum of
 £ and interest thereon or any part thereof respectively
 at the day or time hereinbefore appointed for payment thereof
 contrary to the tenor and effect of the proviso hereinbefore con-
 tained it shall be lawful for the said (*mortgagor*) his executors
 or administrators to hold make use of and possess the said

goods chattels and premises hereby assigned or intended so to be without any manner of hindrance or disturbance of or by him the said (*mortgagee*) his executors administrators or assigns

And lastly the said (*mortgagee*) in consideration of the premises doth hereby for himself his heirs executors and administrators covenant and agree with the said (*mortgagor*) his executors and administrators that he the said (*mortgagee*) his executors administrators or assigns shall not nor will until default shall be made in payment of the said sum of £ and interest or some part thereof on some or one of the days or times limited for payment thereof in and by the proviso for redemption hereinbefore contained bring commence or institute any action suit or process against the said (*mortgagor*) his executors or administrators for recovery of the said debt or any part thereof *Provided nevertheless* That anything herein contained shall not extend to bar or preclude the said (*mortgagee*) his executors administrators or assigns from having or taking any remedy whatsoever against any other person or persons who shall during the time this security shall remain in force unlawfully seize upon or remove dispose of or take away all or any part of the property and effects comprised in this security *In witness* whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

The Schedule to which the above written indenture refers.

No.
CCXXVII.
Goods in Shop.

Covenant by
mortgagee not
to sue until
default.

No. CCXXVIII.

Bill of Sale from the Sheriff of Goods taken in Execution.

Obs. 1. Where goods taken in execution were put up to sale, and the purchaser took a bill of sale from the sheriff, but permitted the vendor to continue in possession, who afterwards executed another bill of sale to another party, it was held that the first bill of sale was valid, and the purchaser was entitled to recover, *Kidd v. Rawlinson*, 2 B. & P. 59; S. C. 3 Esp. 52; so where the purchaser, having taken a bill of sale from the sheriff, let the goods to the vendor at a rent, which was actually paid, it was held that he had a title, which could not be impugned as fraudulent by other creditors having executions against the same party, *Watkins v. Birch*, 4 Taunt. 823.

2. An *ad valorem* stamp as on a conveyance, see *post*, PURCHASE DEEDS.

No.
CCXXVIII.
*Goods taken in
Execution.*

No. CCXXVIII. <i>Goods taken in Execution.</i>	<i>This Indenture &c. Between C. B. of &c. Esq. sheriff of the</i>
Recital of writ of execution.	said county of the one part and (<i>Creditor</i>) of &c. of the other part <i>Whereas</i> a writ of <i>fiery facias</i> issuing out of her Majesty's Court of Queen's Bench at Westminster directed to the said C. B. was received at the office of the under-sheriff commanding him that he should cause to be levied of the goods and chattels of G. L. within his bailiwick a certain debt of £ which the said (C.) had recovered against him in the said court together with the sum of £ for damages costs and charges which the said (C.)
Execution of writ.	had sustained and expended by reason of his suit <i>And whereas</i> the said C. B. hath by virtue of the said writ taken in execution the stock and utensils in trade household furniture goods chattels and other effects and things particularly mentioned and set forth in the schedule hereunder written being in and upon the mes- suage yard stable and other buildings and premises now in the occupation of the said G. L. situate and being in F. in the county aforesaid and hath caused the same goods chattels and effects to be appraised by R. S. a person of competent skill who
Valuation of goods.	hath valued the same at the sum of £ <i>And whereas</i> the said C. B. hath agreed to assign all the said stock &c. so taken in execution as aforesaid and particularly mentioned &c. unto the said (C.) for the sum of £ at which the same have
Sale to creditor.	been valued as aforesaid <i>Now this Indenture witnesseth</i> That in consideration of the sum of £ of lawful money of Great Britain by the said (C.) to the said C. B. in hand paid at or before the execution of these presents the payment and re- ceipt of which said sum of £ and that the same is in full for the absolute purchase of the said stock and utensils in trade household furniture and other goods chattels and effects he the said C. B. doth hereby acknowledge and of and from the same and every part thereof doth acquit release and discharge the said (C.) his executors administrators and assigns for ever <i>He</i> the said C. B. as sheriff as aforesaid as far as he lawfully can or may by virtue of his said office of sheriff and not further or otherwise <i>Doth</i> hereby bargain sell assign and set over unto the said (C.) his executors administrators and assigns <i>All</i> and singular the stock and utensils in trade household furniture goods chattels and effects particularly mentioned and set forth in the schedule hereunder written and which have been taken in execution by the said C. B. by virtue of the said writ of <i>fiery facias</i> of all which said goods chattels and effects hereby bargained sold and assigned the said C. B. at the time of the sealing and delivering
Testatum.	

hereof hath delivered or intends to deliver or cause to be delivered possession to the said (C.) *To have and to hold* the said stock &c. unto the said (C.) his executors &c. as his and their own goods chattels and effects absolutely *In witness* whereof the said C. B. hath hereto set his hand and seal of office and the said (C.) hath set his hand and seal the day and year first above written.

The Schedule above referred to.

[*Add the Schedule.*]

(*Signature.*)

The above written indenture having been first duly stamped was signed with the name of C. B. sheriff of the county of F. sealed with his seal of office and delivered as his act and deed by J. C. gentleman under-sheriff of the said county in the presence of W. G.

Signed sealed and delivered by
the above named (C.) in the
presence of

R. M.

Common Receipt for Consideration-money by Sheriff.

Mem. That at eight o'clock in the morning of the day of the date of the above written indenture T. H. the bailiff of the within named sheriff on the part and behalf of him the said sheriff and by his order delivered to the above named (C.) one chair in the name and as the symbol of all the goods chattels and effects mentioned in the above written schedule or inventory in my presence.

C. L.

No. CCXXIX.

No. CCXXIX.

Bill of Sale for securing the Payment of a Sum of Money (with Variations, where it is given only as a Collateral Security, accompanied with a Bond or Warrant of Attorney).

Payment of Money.

Obs. On the assignment of property by an instrument of this sort, there must be a complete change of possession, or the deed will be void against creditors; it is not enough that a person is put in to keep possession jointly with the vendor, *Wardall v. Smith*, 1 Campb. 333.

No. CCXXIX. *This Indenture &c.* Between (*Debtor*) of &c. of the one part
Payment of and (*Creditor*) of &c. of the other part *Whereas* (*a*) the said
Money. (*D.*) is indebted unto the said (*C.*) in the sum of £ and
Recital of debt. being at present unable to pay the same hath agreed to make
And agreement such assignment or bill of sale to him of the goods chattels
to assign goods furniture and effects mentioned in the schedule hereunder written
to creditor. for better securing the payment thereof as hereinafter is ex-
Testatum. pressed (*b*) *Now this Indenture witnesseth* That in pursuance of
the said agreement and in consideration of the sum of £
so due (*c*) to the said (*C.*) by the said (*D.*) at the time of the
sealing and delivery of these presents as hereinbefore is men-
tioned which the said (*D.*) doth hereby admit and acknowledge
He the said (*D.*) *Doth* hereby bargain and sell unto the said
(*C.*) his executors administrators and assigns *All* and singular
the household furniture beds bedding plate china linen glass
books pictures and other the goods chattels and effects men-
tioned or described in or by the inventory thereof hereunder
written or hereunto annexed and all the estate right title interest
property claim and demand whatsoever both at law and in equity
of him the said (*D.*) of in or to the same respectively *To have*
and to hold and take and enjoy the said household and other
furniture goods &c. and all and singular other the premises
hereinbefore bargained and sold or intended so to be with their
and every of their rights members and appurtenances unto the
said (*C.*) his executors &c. to and for his and their own proper
use and benefit Subject nevertheless to the proviso for re-
demption of the premises hereinafter contained (that is to say)

*Sale to a pur-
chaser.*

(*a*) If the bill of sale be made to a purchaser, say, "*Whereas* the said (*purchaser*) hath contracted with the said (*vendor*) for the absolute purchase of the several goods chattels furniture and effects mentioned in the schedule hereunder written."

(*b*) If the bill of sale be intended to accompany a bond or warrant of attorney as a collateral security, say, "*Whereas* the said (*debtor*) hath executed a bond [*or* 'warrant of attorney'] in writing under his hand and seal bearing or intended to bear even date with these presents in the penal sum of £ with a condition [*or* 'defeasance'] thereunder written for making void the same on payment of the sum of £ and interest after the rate of five per centum per annum on the day of now next ensuing *And whereas* it hath been agreed that for better securing the payment of the said sum of £ the said (*debtor*) shall execute such bill of sale of the goods and effects mentioned in the schedule hereunder written as hereinafter is expressed." *Now &c.*

(*c*) If the sale be to a purchaser, the consideration of a debt must be omitted.

Provided always and these presents are upon this express condition That if the said (*D.*) his executors or administrators shall pay unto the said (*C.*) his executors administrators or assigns the sum of £ with interest for the same after the rate of £5 per cent. per annum on the day of next ensuing the date of these presents without any deduction or abatement whatsoever [except income tax] then and in such case the bargain and sale or other assurance hereinbefore made (*a*) shall cease and forthwith be delivered up to be cancelled And (*b*) the said (*D.*) *Doth* hereby for himself his heirs executors and administrators covenant with the said (*C.*) his executors administrators and assigns in manner following (that is to say) That he the said (*D.*) his executors or administrators shall and will well and truly pay or cause to be paid unto the said (*C.*) his executors administrators and assigns the said sum of £ at the time and after the rate and in the manner aforesaid (*c*) appointed for the payment thereof according to the true intent and meaning of these presents And also [see *Covenants for Right to Assign*, §c., ante, pp. 481, 482 (*d*).]

No. CCXXIX.

Payment of
Money.Proviso for re-
demption.Covenant by
debtor to pay
money.

—◆—

Bills of Sale of Ships, &c. see SHIPPING.

(*a*) If the bill of sale accompany a bond or warrant of attorney, say, "together with the said hereinbefore in part executed bond [or 'warrant of attorney']."

(*b*) Where it is a purchase, this covenant must be omitted.

(*c*) If the bill of sale accompany a bond or warrant of attorney, say, "in the manner hereinbefore and in the condition [or 'defeasance'] of the said in part recited bond [or 'warrant of attorney'] appointed for the payment thereof accordingly."

(*d*) If it be necessary, add here, "And the said (*creditor*) for himself &c. doth covenant &c. with the said (*debtor*) by these presents that he the said (*creditor*) his executors &c. shall and will immediately after the receipt of the said sum of £ according to the true intent and meaning of the condition aforesaid upon the request of the said (*debtor*) well and truly deliver unto the said (*debtor*) &c. the said goods &c. and all other the premises which the said (*creditor*) received of the said (*debtor*) at or before the sealing and delivery of these presents in as good plight and condition as the same and every of them at this present time now are."

Covenant by
creditor.

BONDS.

- | | |
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| <ol style="list-style-type: none"> 1. <i>Definition of a Bond.</i>
 <i>Distinction between Obligor and Obligee.</i>
 <i>Penalty.</i>
 <i>What recoverable on a Bond.</i> 2. <i>Who may or may not be Parties to a Bond.</i>
 <i>Bond joint only.</i>
 <i>Joint and several.</i>
 <i>Several only.</i> 3. <i>Effect of a Bond joint or joint and several.</i> | <ol style="list-style-type: none"> 4. <i>Contribution by co-Sureties.</i> 5. <i>Form of a Bond.</i> 6. <i>Consideration.</i> 7. <i>Condition of a Bond.</i>
 <i>Illegality of, vitiates Bond.</i>
 <i>Construction of the Condition.</i> 8. <i>Form of Condition.</i> 9. <i>Limitation of Actions on Bonds.</i> 10. <i>Bonds to the Crown.</i> 11. <i>Stamp.</i> |
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Definition of a bond.

Penalty.

What recoverable on a bond.

SECT. 1. A bond or obligation is a deed under seal, whereby one called the obligor binds himself to one called the obligee to pay money or do some other thing. When a bond is simple, or single, that is, without a condition, it is properly an obligation; but when a condition is annexed, as is usually the case, it is a double bond, most commonly called a bond, Sheph. Touch. 367. The obligor is generally bound in a penal sum, double the amount of the sum intended to be secured, and on his failing to perform the condition, the bond becomes forfeited at law, but equity interposes to restrain the obligee from taking more than his principal and interest. And in pursuance of the same principle, the 4 & 5 Ann. c. 16, provides, that when a bond is given to secure the payment of a sum of money, a tender of the principal sum due, with interest and costs, shall be a full satisfaction of such bond, though the same at law may be forfeited. By an equitable construction of this statute, it is held, that interest cannot be recovered upon a bond beyond the amount of the penalty, it being a settled point, both at law and in equity, that the penalty is the debt, except in particular cases, *Wild v. Clarkson*, 6 T. R. 303; *Clark v. Seton*, 6 Ves. 415; *Branscombe v. Scarborough*, 13 L. J., N. S. 247; 8 Jur. 688; 6 Q. B. 13.

Who may or may not be parties to a bond.

2. All persons having a legal capacity to contract may, in general, bind themselves in bonds and obligations, 4 Co. 124; 5 Co. 119. A corporation may bind themselves in an obligation under their common seal, Vin. Abr. tit. Corporation (G. 2). But an infant cannot bind himself in a bond with a penalty conditioned for payment of interest as well as principal, not even for necessities, unless by single bill, see Hurlstone on Bonds, p. 3; 1 Lev. 86; *Fisher v. Mowbray*, 8 East, 330. So the bond of an idiot, or of one that is drunk at the time of making the bond, is void, 2 Stra. 1104; Bull. N. P. 172. So a

bond given by a man in duress, that is, unlawful imprisonment, is void, 2 Inst. 482; 4 Inst. 97; Allen, 92. A bond given by a married woman will bind neither her nor her husband, but is absolutely void, Bac. Abr. Oblig. (D.); but if she has a separate estate, it may render her liable in equity, *Bullen v. Clarke*, 17 Ves. 366; *Stewart v. Kirkwall*, 3 Madd. 387; *Lee v. Muggeridge*, 5 Taunt. 36. And one partner cannot bind the others by bond, unless an express power to that effect be given, *Harrison v. Jackson*, 7 T. R. 207. Executors and administrators are bound by the obligation of the testator, although not named, but the heir is not bound, unless named. And the heir, if named, on a defect of personal assets in the hands of the executors and administrators, is bound to discharge the same, provided he has real assets, 2 Comm. 340; Bull. N. P. 175. If the obligation be made to one and his heirs, the executors and administrators shall take advantage of it, Sheph. Touch. 376. When two or more bind themselves in a bond by the words, "We bind ourselves," and say no more, the bond is joint; but if it be thus, "We bind ourselves, and each of us, our heirs, and each of our heirs, &c.," the bond is joint and several, Sheph. Touch. 376. If it be expressed in a bond that two or more persons are jointly and severally bound, and one of them does not execute the bond, it is not the joint bond of those who executed it, but only the several bond of each of the parties signing, *Elliott v. Davis*, 2 B. & P. 338. If in a bond conditioned for the payment of a sum, it be worded thus, "For which payment to be well and faithfully made we bind ourselves and each of us for himself for the whole and entire sum of £ ," it has been held that this was a several bond only, and that the obligees, by removing the seal of one of the obligors, did not render it void as to the others, *Collins v. Prosser*, 1 B. & C. 682. Three obligors bound themselves "jointly," and their heirs, &c., "respectively" to pay, with a condition for avoiding the bond if they or either of them, their or either of their heirs paid; it was held to be a joint and several obligation, making the assets of one of them who had died liable, *Tippins v. Coates*, 18 Beav. 401.

Bond joint only.

Joint and several.

Several only.

3. When the obligation is joint, the obligee must sue the obligors altogether, Sheph. Touch. 375. When the obligation is joint and several, he may either sue them altogether, or each of them separately; but he may not sue some and spare the rest, 1 Saund. 291. If the bond be joint, and one of the obligors die, the survivor only is charged; but it is otherwise where the bond is joint and several, 2 Vern. 99. A. and B. were obligors in a joint bond; A., who was alleged to be the principal debtor, died: it was held, that his assets were not liable in equity upon the bond, but that the liability survived to B., *Richardson v. Horton*, 6 Beav. 185; *Rairstone v. Parr*, 3 Russ. 424, 539; *Conell v. Sikes*, 2 Russ. 191. See *Wilmer v. Currey*, 2 De G. & S. 347, the case of a joint covenant.

Effect of a bond joint or joint and several.

*Bonds.*Contribution by
co-sureties.

4. The right of contribution, as between co-sureties, is not precisely the same at law as in equity. Where several parties are bound, they must be bound in one and the same penalty, to give co-sureties a right of action for contribution; but if each is bound for a distinct penalty, it does not make the one bound for the penalty of the other. For the remedy at law is founded on the principle, that one pays that to which all are liable, *Collins v. Prosser*, 1 B. & C. 682. On the other hand, contribution in equity being founded on a principle of justice and equality, it is immaterial whether co-sureties give joint or separate bonds, except that in the latter case they must contribute to the amount of the security; but if they are all jointly bound in one obligation in a penal sum, they must all contribute equally, *Deering v. Earl of Winchelsea*, 2 B. & P. 270.

Form of a bond.

5. Although the usual manner of framing a bond is the best, yet any words in a deed sealed and delivered, which appear on the face of it to have been intended as a bond, will make a good obligation, Cro. Car. 129. An obligation must be on parchment or paper, and sealed (which is indispensably requisite), otherwise it is void, Co. Litt. 35 b; Sheph. Touch. 376; Dyer, 19 a; but signing is not essential to its validity, 2 Cro. Eliz. 642, nor any particular form of delivery, Co. Litt. 36 a. If the bond be altered by the obligee, although but in an immaterial point, he vacates the deed, 10 Co. 92; Bull. N. P. 267; see Hurlstone on Bonds, pp. 120, 122. A release of a bond, or a dispensation with its conditions, must be by deed, *Sellers v. Bickford*, 8 Taunt. 31; *S. C. J. B. Moore*, 460.

Consideration.

6. The want of a consideration to a bond affords no ground of objection; but if there be anything illegal in the consideration, the defendant is allowed to plead it in bar to the action, *Fallowes v. Taylor*, 7 T. R. 477.

Condition of a
bond.Illegality of,
vitiates bond.

7. If the condition of a bond be to do that which is unlawful, impossible, or so insensible and uncertain that the meaning cannot be known, it is void, Sheph. Touch. 372; 2 Salk. 462. So if the condition be against the provisions of a statute, the rules and claims of decency, and the dictates of morality, it is void at law and in equity, 1 Fonbl. Eq. 228; *Coleman v. Sarell*, 3 Br. C. C. 12; Sheph. Touch. by Preston, 71.

Construction
of condition.

Bonds entered into for particular purposes are declared void by several statutes, as by 5 & 6 Edw. 6, c. 16, bonds given for buying or selling offices, see Hurlstone on Bonds, pp. 17, 20; by 13 Eliz. c. 5, for avoiding the debt and duty of others; by 16 Car. 2, c. 7, and 9 Ann. c. 14, for procuring the return of a member of parliament; by 12 Ann. c. 16 (now repealed), bonds upon usurious contracts. The condition of a bond being in favour of the obligor, as protecting him from the penalty, 1 Saund. 16, it is literally construed, and may be restrained by the recital; as where in the condition it was recited,

that a sheriff had appointed the defendant bailiff of a hundred within his county, it was adjudged that the words "all warrants" in the condition itself should be intended only all warrants which were directed to the defendant as bailiff of the said hundred, and not other warrants, cited in *Lord Arlington v. Merrick*, 2 Saund. 411, 412. This rule of construction is more strictly observed in favour of sureties, where, in the condition of the bond, it was recited that the surety was bound for six months only, although the words in the condition were indefinite, "during all the time he shall continue, &c.," *Lord Arlington v. Merrick*, 2 Saund. 411; see *North Western Railway Company v. Whinsay*, 10 Exch. 77; 23 L. J., Exch. 261. So a bond entered into by a surety for the faithful service of a clerk to any person or persons (not forming an incorporated company) becomes void as soon as there is any change in the firm by death or otherwise, *Wright v. Russell*, 3 Wils. 532; *S. C.* 2 Bl. 934; *Barker v. Parker*, 1 T. R. 287; unless the condition be so worded as to provide for this contingency.

Bonds frequently become inoperative by the change or death of partners in a firm, unless they are so worded as to meet the change of circumstances. A bond given by a party to three bankers conditioned for payment of all sums advanced by them at their bank, will not cover future advances made after the death of one of the partners and the admission of another, *Strange v. Lee*, 3 East, 484; *Pemberton v. Oakes*, 4 Russ. 154. A surety for such sums as should be advanced to meet bills drawn by A. and B. as partners, or either of them, will not be liable for bills drawn by B. after the death of A., *Simpson v. Cooke*, 1 Bing. 588; *Weston v. Barton*, 4 Taunt. 673. It is now provided by the Mercantile Amendment Act, that a guarantee to A. by a firm shall cease upon a change in the firm except in special cases, 19 & 20 Vict. c. 97, s. 4, *ante*, p. 94, sect. 4. A bond or other security may be so worded as to extend to advances and transactions made or entered into after a change in the firm. A bond will be a continuing security, notwithstanding a change in the firm, where the condition of it is to pay to bankers and every other person who should become a partner in the firm, all such sums of money not exceeding a specified amount, as the partners or any future partner should advance to the obligor, *Batson v. Spearman*, 9 Ad. & E. 298; 3 Per. & D. 77; *Metcalfe v. Bruin*, 12 East, 400; *Ex parte Lloyd*, 3 Dea. 305.

A bond may be set aside in equity upon the ground that it was obtained by undue influence and a suppression of facts, *Cooke v. Lamotte*, 21 L. J., Ch. 371; *Squire v. Watson*, 1 H. L. Ca. 333.

A court of equity will not allow a party to set up an objection to the validity of his own obligation, upon the grounds he suppressed at the time, but against which, if divulged, the party with whom he was dealing might have protected himself. A bond

Change or
death of par-
ties.

Bonds.

was assigned for valuable consideration without notice of objection to its validity, and the obligor having applied to the assignee for a further advance, offering to give a mortgage for the whole, but stating no objection to the validity of the bond, was not allowed to endeavour to avoid the bond by evidence that it was given to secure money lost by a bet on a horse-race, *Hawker v. Halliwell*, 3 Sm. & G. 194; 2 Jur., N. S. 537; affirmed on appeal, 2 Jur., N. S. 794; 25 L. J., Ch. 558; see 4 & 5 Will. 4, c. 41.

Form of condition.

8. If the words at the close of the condition, "Then this condition shall be void," be omitted, the condition is void, but the obligation remains in force; but the omission of the subsequent words, "or else shall remain in full force," is immaterial, Sheph. Touch. 371. If the condition of a bond be to pay money, or to do any other thing, and no time be named in the condition, it is now settled that the bond shall be payable on the day of the date, *Farquhar v. Morris*, 7 T. R. 124. When no place is mentioned for the performance of the condition, it must be done to the person of the obligee, if he be within the four seas. But although the place be named, yet if the obligee receive payment in any other place, it is sufficient to save the bond; and by the 4 Ann. c. 4, s. 12, such payment may be pleaded in bar of any action, Har. Co. Litt. 212 n.

Limitation of actions on bonds.

9. By 3 & 4 Will. 4, c. 42, s. 3, all actions on bonds are to be brought within twenty years after the cause of action accrued, provided that infants, married women, lunatics, and persons beyond the seas, may bring actions beyond that time, so that they proceed within the same time after the disability is removed. By sect. 7, no part of the United Kingdom is to be considered as beyond the seas. By sect. 5, an acknowledgment in writing signed by the party liable or his agent, a part payment or satisfaction on account of principal or interest, extends the term for a further period of like limitation, see Shelford's Real Prop. Stat. pp. 269—274, 6th ed.

Bonds to the crown.

10. A bond given to the crown under 33 Hen. 8, c. 39, may be made payable to the king, his heirs or successors, *Reg. v. Ellis*, 4 Exch. 652; 19 L. J., Exch. 77; *Ellis v. Reg.* (in error), 6 Exch. 921. By a bond given to the crown under that statute, all the lands of the obligor are bound from that date, and as such bond is a voluntary act, the obligor cannot by mortgaging any portion of his lands, even under a power of appointment contained in a deed prior to the bond, render them free from liability under an extent subsequently issued upon the bond, *Ib.* Upon a proceeding of *amoveas manus*, the court may take notice of the bond upon which the extent has issued, *Ib.*

Stamp duty, amount.

11. The amount of stamp duty on bonds is now regulated by 13 & 14 Vict. c. 97, which imposes an *ad valorem* duty on the amount secured by the bond, and, if it contain 2160 words, a progressive duty (regulated by the sum secured) on every 1080 words beyond the first 1080.

If several persons are bound under one penalty for the performance of the same matters, one stamp is sufficient, *Godson v. Forbes*, 1 Marsh. 531. Formerly, if the stamp was insufficient, it was a ground of nonsuit, 2 M. & S. 88; 2 Price, 20; but it is sufficient if the instrument bear a proper stamp when it is produced, 2 Marsh. 485; 7 Taunt. 147. By 17 & 18 Vict. c. 125, s. 29, a document may be made admissible in evidence on payment of the duty and penalty to the officer of the court.

Bonds.

Transfers of bonds and mortgages of public companies are exempted from stamp duty, if on their original issuing a composition for an *ad valorem* duty was paid, 16 & 17 Vict. c. 59, s. 14. Bonds by collectors of land tax are exempted from stamp duty, by 3 Geo. 4, c. 88; so receivers of land and assessed taxes, by 4 & 5 Will. 4, c. 60, s. 15; so bonds to prosecute commissions or fiats of bankruptcy and assignments thereof, also replevy bonds and assignments thereof, are exempt from stamp duty, by 5 Geo. 4, c. 41; so bonds by treasurers of savings banks, and also administration bonds for effects of depositors, by 9 Geo. 4, c. 92, s. 41; so bonds by owners of vessels to commissioners of customs, 3 & 4 Will. 4, c. 53, s. 19; so bonds by licensed dealers in stamps, by 3 & 4 Will. 4, c. 98, s. 1; so bonds by treasurer, &c. of loan society, 5 & 6 Will. 4, c. 23, s. 5; 3 & 4 Vict. c. 110, s. 12; so bonds by collectors of highway rates, by 5 & 6 Will. 4, c. 50; and East India bonds, on payment of a composition, by 5 & 6 Will. 4, c. 64, s. 4.

Exemptions.

OBLIGATORY PART OF A BOND.

No. CCXXX.

From One to One.

Know all Men by these presents That I (*obligor*) of &c. am held and firmly bound to (*obligee*) of &c. his executors administrators and assigns in the sum of £ [double the condition, see Pref. sect. 1] to be paid to the said (*obligee*) his executors administrators or assigns to which payment well and truly to be made I bind myself my heirs (*a*) executors and administrators firmly by these presents.

Sealed with my seal and dated this day of in the year of our Lord 18

No. CCXXX.

From One to One.

(a) As to the naming of the heirs, see Pref. sect. 2.

No. CCXXXI.

No. CCXXXI.

*From Two to
One or more.**From Two to One or more.*

Know all Men by these presents That we (*obligors*) of &c. are held and firmly bound to (*obligee*) in the sum of £ [*double the sum to be secured*] of lawful money of Great Britain to be paid to the said (*obligee*) (*a*) or to his executors administrators or assigns for which payment to be well and faithfully made we bind ourselves and each of us our and each of our heirs executors and administrators and every of them jointly and severally firmly by these presents Sealed with our seals Dated &c.



No. CCXXXII.

No.
CCXXXII.*From Three or
more to One.**From Three or more to One.*

Know all Men by these presents That we A. B. of &c. C. D. of &c. and E. F. of &c. are held and firmly bound to Y. Y. of &c. in the sum of £ [*double the money to be secured*] of lawful money of Great Britain to be paid to the said Y. Y. or to his executors administrators or assigns for which payment to be well and faithfully made we bind ourselves and every of us and any two of us our and every of our or any two (*b*) of our heirs executors and administrators and every of them jointly and severally firmly by these presents Sealed with our seals Dated &c.

(*a*) If two obligees, say, "and (*other obligee*) or either of them their or either of their executors administrators or assigns." If obligees are tenants in common, say, "as tenants in common their or either of their executors administrators or assigns."

(*b*) Where there are more than two obligors words giving a power to sue two or three, &c. of them, should always be introduced as if three were jointly and severally bound, the obligee cannot sue two of them only during the life of the third, but must either sue them all or each of them severally, unless words of this kind are introduced, *Streatfield v. Halliday*, 3 T. R. 782; 1 Saund. 291, e, n.



CONDITIONS OF BONDS.

No. CCXXXIII.

Bond from a Receiver.

No.
CCXXXIII.
To Account.
(Receiver.)

Obs. As to the form, &c. of the condition, see Pref. sect. 8.

Know all &c. That &c. *Whereas* the above named (*obligee*) hath retained and employed the above bounden (*obligor*) to be the receiver of the rents issues and profits of all and singular his the said (*obligee's*) messuages lands and tenements situate lying and being in &c. *Now the Condition* of the above written obligation is such That if the said (*obligor*) shall from time to time and at all times hereafter pay or cause to be paid unto the said (*obligee*) his heirs executors administrators or assigns all such sum and sums of money as shall be by him had and received of the said rents issues and profits and render to the said (*obligee*) his heirs &c. a true and just account of all and every sum and sums of money that shall be by him received paid laid out and disbursed of from for or on account of the said lands or the rents &c. thereof or of for or on account of the said (*obligee*) his &c. *And also* will truly justly and honestly in every respect behave himself in the said office or employment of receiver of the aforesaid rents &c. Then this obligation to be void or otherwise shall remain in full force and virtue.

A. B. (*obligor*)

Signed sealed and delivered by the above named A. B.
(being first duly stamped) in the presence of

C. D.

E. F.

No. CCXXXIV.

Bond from the Treasurer of a Company.

No.
CCXXXIV.
By Treasurer.

Know all &c. That &c. *Whereas* an act of parliament was passed &c. [*recite act for forming a railway or a canal company &c. as the case may be*] And it was among other things enacted That it should be lawful for the said company of proprietors at any general meeting assembled and they were thereby required from time to time to nominate and appoint a treasurer and clerk and

No. CCXXXIV. <u>By Treasurer.</u>	such other officers as they should think proper And should take sufficient security from every such treasurer or other officers having the care and custody of any money to be raised or received by virtue of the said act for the due execution of the said office as the said company of proprietors should think proper <i>And whereas</i> at a general meeting of the company of proprietors of holden &c. the above bounden (<i>obligor</i>) was appointed treasurer to the said company <i>And</i> upon such appointment the said (<i>obligor</i>) agreed to enter into a bond in a sufficient penalty for insuring to the said company the faithful discharge of his duties in the said office and in pursuance of such agreement hath executed the above written bond subject to such condition for making the same void as hereinafter is contained <i>Now</i> &c. That if the said (<i>obligor</i>) do and shall weekly during such time as he shall continue to be treasurer of the said company or oftener if thereunto required well and truly account for pay and deliver unto the committee of the said company for the time being appointed to manage the affairs of the company or unto such other person or persons as the said committee shall appoint to receive the same all such sum and sums of money books papers writings receipts vouchers matters and things which he the said (<i>obligor</i>) hath received or shall from time to time be intrusted with or which shall come into his hands for or on account of or to the use of the said company and their successors <i>And also</i> if the said (<i>obligor</i>) do and shall from time to time whilst he shall continue treasurer in all things and in all respects well and faithfully execute and perform the said office of treasurer Then &c.
Appointment of treasurer.	
Condition.	



*To Account by
Administrator.*

ADMINISTRATION BONDS.

Bond required
by statute.

Obs. 1. By the 22 & 23 Car. 2, c. 10, the ordinary or ecclesiastical judge is required to take a bond, with two or more sureties, from the person to whom the administration of an intestate's goods is committed, duly to account for such effects as shall come into his hands.

So much of the acts 21 Hen. 8, c. 8; 22 & 23 Car. 2, c. 10; and 1 Jac. 2, c. 17, as requires any surety, bond, or other security to be taken from a person to whom administration shall be committed, are repealed, 20 & 21 Vict. c. 77, s. 80. Every person to whom any grant of administration shall be committed, shall give bond to the judge of the Court of Probate to enure for the benefit of the judge

Persons to
whom grants of
administration
shall be com-
mitted shall
give bond.

for the time being, and if the Court of Probate or (in the case of a grant from the district registry) the district registrar shall require, with one or more surety or sureties (*a*) conditioned for duly collecting, getting in and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct; provided that it shall not be necessary for the solicitor for the affairs of the Treasury or the solicitor of the Duchy of Lancaster, applying for or obtaining administration to the use or benefit of her Majesty, to give any such bond as aforesaid, 20 & 21 Vict. c. 77, s. 81.

To Account by Administrator.

Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the court or district registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the court or district registrar so to do; and the court or district registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the court or district registrar shall think reasonable, 20 & 21 Vict. c. 77, s. 82.

Penalty on bond.

The court may on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the registrars of the court to assign the same to some person to be named in such order; and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond in his own name both at law and in equity, as if the same had been originally given to him instead of to the judge of the court, and shall be entitled to recover thereon as trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the said bond, 20 & 21 Vict. c. 77, s. 83. Bonds given to any archbishop, bishop, or other person exercising testamentary jurisdiction in respect of grants of letters of administration made prior to the 11th January, 1858, or in respect of grants made in pursuance of the Court of Probate Act, or of the act 21 & 22 Vict. c. 95, whether taken under a commission or requisition executed before or after the said 11th January, shall enure to the benefit of the judge of the Court of Probate, and if necessary, shall be put in force in the same manner and subject to the same rules (so far as the same may be applied to them) as if they had been given to the judge of the said court subsequently to that day, 21 & 22 Vict. c. 95, s. 15.

Power of court to assign bond.

Bonds given before January 11, 1858, to remain in force.

Administration bonds are to be attested by an officer of the principal registry, by a district registrar, or by a commissioner or other person now or hereafter to be authorized to administer oaths under 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95; but in no case are they

Attestation of administration bonds.

(a) See AFFIDAVIT OF SURETIES, No. XLVIII., *ante*, p. 73.

To Account by
Administrator.

to be attested by the proctor, solicitor, attorney, or agent of the party who executes them. The signature of the administrator or administratrix to such bond, if not taken in the principal registry, must be attested by the same person who administers the oath to such administrator or administratrix. In all cases of limited or special administration, two sureties are to be required to the administration bond, and the bond is to be given in double the amount of the property, to be placed in the possession of or dealt with by the administrator by means of the grant. The alleged value of such property is to be verified by affidavit if required. Further rules under stats. 20 & 21 Viet. c. 77, and 21 & 22 Viet. c. 95, Nos. 4, 5.

2. As to sureties and their remedies against each other, see Pref. sect. 4, *ante*, p. 494.

Stamp duty.

3. If the estate to be administered does not exceed 20*l.* in value, an administration bond is exempt from all duty, otherwise it is charged, by the 55 Geo. 3, c. 184, with a 1*l.* stamp duty; but bonds for administering effects of depositors in savings banks, not exceeding 50*l.*, are exempt, 9 Geo. 4, c. 92, s. 41.



No.
CCXXXV.

Administration.

No. CCXXXV.

Administration Bond.

Know all Men by these Presents That we A. B. of
C. D. of and E. F. of are jointly and severally
bound unto G. H. the judge of her Majesty's Court of Probate
in the sum of £ of good and lawful money of Great
Britain to be paid to the said G. H. or to the judge of the said
Court for the time being for which payment well and truly to be
made we bind ourselves and of us for the whole our heirs
executors and administrators firmly by these presents Sealed
with our seals Dated the day of in the year of
our Lord one thousand eight hundred and The con-
dition of this obligation is such that if the above named A. B.
the [*as the case may be*] of I. J. late of deceased who
died on the day of do when lawfully called on in
that behalf make or cause to be made a true and perfect inven-
tory of all and singular the personal estate and effects of the said
deceased which have or shall come to hands possession
or knowledge or into the hands and possession of any other
person for and the same so made do exhibit or cause to
be exhibited into the Principal Registry of her Majesty's Court

of Probate whenever required by law so to do and the same personal estate and effects and all other the personal estate and effects of the said deceased at the time of death which at any time after shall come to the hands or possession of the said or into the hands or possession of any other person or persons for do well and truly administer according to law (that is to say) do pay the debts which did owe at

decease And further do make or cause to be made a true and just account of said administration whenever required by law so to do And all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto under the Act of Parliament intituled "An Act for the better settling of Intestates Estates" And if it shall hereafter appear that any last will and testament was made by the said deceased and the executor or executors therein named do exhibit the same into the said court making request to have it allowed and approved accordingly if the said

being thereunto required do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court Then this obligation to be void and of none effect or else to remain in full force and virtue.

Signed sealed and delivered in the presence of

K. L. Registrar

[or "O. P. a clerk in the Principal Registry
of her Majesty's Court of Probate."]



No. CCXXXVI.

Administration Bond for Administrators with the Will.

Know all Men &c. [The same as in No. CCXXXV.] The condition of this obligation is such that if the above named A. B. the [as the case may be] of I. J. late of deceased who died on the day of do when lawfully called on in that behalf make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands possession or knowledge and the same so made do exhibit or cause to be exhibited into the Principal Registry of her Majesty's Court of Probate whenever required by law so to do and the same personal estate and effects do well and truly

No.
CCXXXV.
Administration.

No.
CCXXXVI.
*Administration
with Will.*

No.
CCXXXVI.
*Administration
with Will.*

administer (that is to say) do pay the debts of the said deceased which did owe at decease and then the legacies contained in the said will annexed to the said letters of administration so to committed as far as personal estate and effects will thereto extend and the law charge And further do make or cause to be made a true and just account of said administration when shall be thereunto lawfully required And all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled hereto Then this obligation to be void and of none effect or else to remain in full force and virtue.

Signed sealed and delivered in the presence of

K. L. Registrar

[or "O. P. a clerk in the Principal Registry
of her Majesty's Court of Probate."]

No.
CCXXXVII.
*Receiver of
Real Estate.*

No. CCXXXVII.

*Form of Bond to be executed by a Receiver of Real Estate
pending Suit.*

The Court of
Probate may
require security
from a receiver
of real estate.

Obs. It shall be lawful for the Court of Probate to require security by bond in such form as by any rules and orders shall from time to time be directed, with or without sureties, from any receiver of the real estate of any deceased person, appointed by the said court under the 71st section of the Court of Probate Act, 20 & 21 Vict. c. 77, and the court may, on application made on motion or in a summary way, order one of the registrars of the court to assign the same to some person to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said security or put the same in force in his or their own name or names, both at law and in equity, as if the same had been originally given to him instead of to the judge of the said court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount due in virtue thereof, 21 & 22 Vict. c. 95, s. 21. A receiver of real estate pending suit, is to give bond in the form annexed to the rules and orders, or in a form as near thereto as the circumstances of the case will admit of, with two sureties, and in a penalty of such an amount as may be directed by the judge. Further orders under stats. 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, No. 24.

Know all Men by these Presents That we A. B. of &c. C. D. of &c. and E. F. of &c. are jointly and severally bound unto the Right Honourable Sir Cresswell Cresswell Knight the judge of her Majesty's Court of Probate in the sum of £ of good and lawful money of Great Britain to be paid to the said Right Honourable Sir Cresswell Cresswell or to the judge of the said court for the time being for which payment well and truly to be made we bind ourselves and every of us for the whole our heirs executors and administrators firmly by these presents Sealed with our seals Dated the day of in the year of our Lord one thousand eight hundred and fifty *Whereas* G. H. late of &c. died on the day of 18 having as asserted made and duly executed his [*or "her"*] last will and testament with codicil thereto bearing date respectively the [*here insert dates of the testamentary papers*] *And whereas* there is now pending in judgment in her Majesty's Court of Probate a certain cause or suit instituted by I. J. as one of the executors named in the said will against K. L. the natural and lawful and only next of kin of the said deceased touching and concerning the validity of the said will and codicil in which said cause or suit M. N. as the heir at law of the said G. H. has been cited to see proceedings and has entered an appearance and become a party to the said cause or suit *And whereas* the Right Honourable Sir Cresswell Cresswell the judge aforesaid did on the day of 185 after hearing counsel for and on behalf of all parties to the said cause or suit appoint the above bounden A. B. as and to be receiver of the real estate of the said G. H. pending the said cause or suit *Now* the condition of this obligation is such that if the above bounden A. B. the receiver of the real estate of the said G. H. pending the aforesaid cause or suit do when lawfully called on in that behalf make a true and perfect inventory of all the rents issues and profits of the said real estate which have or shall come to his hands possession or knowledge or into the hands possession or knowledge of any other person for him and the same so made do exhibit or cause to be exhibited into the Principal Registry of her Majesty's Court of Probate whenever required by law so to do and the same rents issues and profits do well and truly pay and appropriate according to law (that is to say) in payment and satisfaction of all charges and expenses which are or may be or become legally charged upon and payable out of the said rents issues and profits and in the letting and managing the said

No.
CCXXXVII.
*Receiver of
Real Estate.*

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*Receiver of
Real Estate.*

real estate and in performing other the duties committed to him by the judge aforesaid *And further* do make or cause to be made a true and just account of his administration of the said rents issues and profits whenever required by law so to do And all the rest and residue of the said rents issues and profits do deliver and pay unto such person or persons as shall be entitled thereto subject to and under the direction of the said court Then this obligation to be void and of none effect or else to remain in full force and virtue.

Signed sealed and delivered by the within named _____ in the presence of P. Q. a clerk in the principal registry or a commissioner or surrogate authorized to administer oaths in the Court of Probate.

No.
CCXXXVIII.
By Clerk.

No. CCXXXVIII.

Bond from a Clerk and his Surety for the faithful Execution of his Office in a Brewery.

Obligation.
Recitals.

Know all &c. Whereas &c. in and by certain articles of agreement bearing date &c. [*recite agreement between the above bounden (clerk) and the said (obligees) his principals*] *And whereas* upon the treaty for the engagement of the said (*obligor*) as such clerk he the said (*surety*) on the behalf and at the request of the said (*obligor*) did consent and agree to become surety unto the said (*obligees*) for the said clerk's true and faithful execution and discharge of his said office as hereinafter is mentioned *Now &c.* That if the said (*obligor*) do and shall at all times so long as he shall continue clerk of the said (*obligees*) in all things well and truly abide by perform fulfil and keep all and singular the covenants and agreements contained in the aforesaid articles on his part and behalf and do and shall faithfully and diligently serve the said (*obligees*) and the survivors or survivor of them for the full term of years mentioned in the said articles and according to the full and true intent and meaning of the said articles Then &c.

Condition.

Bond to secure the Payment of an Annuity to a former Mistress,
see *ante*, No. XCVIII., pp. 185—187.

ANNUITY BONDS.

Obs. As to the stamp duty on bonds for securing the payment of Annuity.
an annuity, see 13 & 14 Vict. c. 97, sched. Bond.

No. CCXXXIX.

Bond for Payment of an Annuity (General Precedent).

No.
CCXXXIX.
*Payment of an
Annuity.*

Know all &c. Whereas the above bounden (*obligors*) have contracted with the above named (*obligees*) to grant to them and the survivor of them and the executors administrators and assigns of such survivor one annuity or clear yearly sum of £ for the lives of H. H. of &c. and W. H. of &c. and the life of the survivor of them at and for the price or sum of £ *And* *whereas* upon the treaty for the purchase of the said annuity or clear &c. of £ it was agreed that the same should be secured by the joint and several warrant of attorney of the above bounden (*obligors*) for confessing judgment thereon upon which judgment is intended to be entered up as hereinafter mentioned in that behalf *And* it was further agreed that the said annuity or &c. of £ might be repurchased at the time and upon the terms and conditions hereinafter mentioned in that behalf *And also* that the costs and charges of preparing and perfecting the said securities for payment of the said annuity and entering up the said judgment should be borne by the said (*obligors*) *And whereas* in part performance of the said agreement the said (*obligors*) have on the day of the date of the above written obligation executed a warrant of attorney bearing even date herewith empowering certain attornies therein named to confess judgment thereon jointly or severally against them in her Majesty's Court of Queen's Bench at Westminster at the suit of the said (*obligees*) for the sum of £ besides costs of suit as of Hilary term last Easter term next or any other subsequent term with a condition or defeasance thereon indorsed that no execution should issue on the judgment intended to be entered up in pursuance of the said warrant of attorney until default should happen to be made in payment of the said annuity on some or one of the days and times and in manner hereinafter mentioned and appointed

Obligation.
Recital of contract.

Warrant of attorney.

Repurchase of annuity.

Costs of securities.

Defeasance.

No. CCXXXIX. <i>Payment of an Annuity.</i>	for the payment thereof when and in such case it should and might be lawful for the said (<i>obligees</i>) or the survivor of them or the executors administrators and assigns of such survivor to sue out one or more writ or writs of execution upon or by virtue of the said judgment for all arrears of the said annuity which should then be due <i>And</i> all costs charges damages and expenses which they or any or either of them might have been at or put unto by reason or on account of the nonpayment thereof without reviving the said judgment or doing any act matter or thing to keep the same on foot notwithstanding the said judgment should have been entered of record for the space of one year or more <i>And</i> that the said (<i>obligors</i>) or either of them their or either of their heirs executors or administrators should not nor would have receive take or attempt by any means to have receive or take any plea exception or advantage for want of reviving the said judgment or keeping the same on foot <i>And</i> that if they or either or any of them should attempt so to do by action motion or other legal proceeding whatsoever the now reciting agreement might be pleaded and shown in bar thereto any rule or practice of the court or other matter or thing to the contrary notwithstanding <i>And whereas</i> it hath been agreed between the said parties that the said (<i>obligees</i>) or the survivor of them or the executors administrators or assigns of such survivor shall and will accept and take the sum of £ in full for the repurchase of the said annuity or yearly sum of £ at the time and upon the terms hereinafter conditioned for the same <i>And</i> they have also agreed that upon the decease of the survivor of them the said H. H. and W. H. in case the said annuity shall not have been repurchased and upon full payment of the said annuity and of the proportional part (<i>a</i>) thereof up to and inclusive of the day of decease of such survivor and of all costs charges and expenses as aforesaid Then the said (<i>obligees</i>) or the survivor &c. or the executors &c. in either of the said cases shall and will at the request costs and charges of the said (<i>obligors</i>) or either of them or their or either of their executors administrators or assigns acknowledge satisfaction on the record of the said judgment <i>Now the Condition</i> &c. That if the above bounden (<i>obligors</i>) or the survivor of them their or either of their heirs executors or administrators shall and do well and truly pay or cause to be paid unto the said (<i>obligees</i>) or the survivor of them
Writ of execution to recover arrears.	
Want of reviving judgment.	
Terms of repurchase.	
Acknowledgment of satisfaction.	
Condition.	

(a) As to the apportionment of rents, see *ante*, APPORTIONMENT.

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CCXXXIX.
*Payment of an
Annuity.*

or the executors administrators or assigns of such survivor for and during the joint natural lives of the said H. H. and W. H. and the life of the survivor of them one annuity or clear yearly sum of £ of lawful money of Great Britain free and clear of and from all taxes charges and impositions whatsoever parliamentary or otherwise (*a*) and to be paid and payable at or in the entrance to the dining hall of Lincoln's Inn in the said county of Middlesex or at such other place or places in or about London or Westminster as the said (*obligees*) or the survivor of them or the executors administrators or assigns of such survivor shall direct or appoint between the hours of eleven and twelve of the clock in the forenoon of the several respective days and times following (that is to say) [*name the days of payment*] (See *ante*, p. 189) *And also* such a like proportional part thereof as shall accrue from and after the last of the aforesaid days of payment next preceding the decease of the survivor of them the said H. H. and W. H. from and up to the day on which such decease shall happen or if the said (*obligors*) or either of them their or either of their heirs executors or administrators shall at any time after the term of five years to be computed from the day of the date of the above written obligation be desirous of repurchasing the said annuity or clear yearly sum of £ and of such his or their intention shall give three calendar months' notice in writing unto the said (*obligees*) or the survivor of them or without or in lieu of such notice shall pay unto them or him the sum of £ being one half year's portion of the said annuity or &c. of £ and do and shall on the expiration of such notice or on such payment in lien thereof as the case may be well and truly pay or cause to be paid unto the said (*obligees*) or the survivor of them or the executors administrators or assigns of such survivor the sum of £ being the original purchase money of the said annuity or clear yearly sum of £ and all and every sum and sums of money which shall then be due and owing to the said (*obligees*) or the survivor of them or the executors administrators or assigns of such survivor for or on account of the said annuity &c. of £ up to and inclusive of the day of paying the same *And also* for and on account of all costs charges damages and expenses which they or any of

(*a*) It has been a common practice to add, "except the income or property tax payable on the same annuity," but this appears to be unnecessary. See 16 & 17 Vict. c. 34, s. 40; 5 & 6 Vict. c. 35, s. 103.

No.
CCXXXIX.
*Payment of an
Annuity.*

them shall or may have been at or put unto for or on account of the nonpayment of the said annuity then the above written obligation shall be void and of no effect otherwise shall be and remain in full force and virtue.



No. CCXL.
Annuity.

No. CCXL.

Bond by intended Husband to Trustees to secure Annuity to his intended Wife.

Obligation.
Recitals.

Know all Men &c. Whereas a marriage hath been agreed upon and is intended to be shortly had and solemnized between the above bounden A. and B. spinster *And whereas* upon the treaty for the said intended marriage it was agreed (amongst other things) that the said A. should execute and give to the above named (*trustees*) his bond or obligation in the above mentioned penalty with such condition for making the same void as hereinafter is contained *Now the Condition of the above written* bond or obligation is such that if the said intended marriage shall take effect and the said A. shall die in the life-time of the said B. and the heirs executors or administrators of the said A. shall and do well and truly pay or cause to be paid unto the said B. and her assigns one annuity or clear yearly sum of £ of lawful money of Great Britain for and during the natural life of the said B. by four equal quarterly payments on the day of &c. [*name the days*] without any deduction or abatement whatsoever the first quarterly payment of the said annuity of £ to be made on such of the said days of payment as shall happen next after the decease of the said A. if the said B. shall then be living or if the said intended marriage shall not take effect or if the said A. shall survive the said B. Then and in any of the said cases the above written bond or obligation shall be void and of no effect otherwise shall remain in full force and virtue.

Condition.



No. CCXLI.

Bond for securing the Payment of an Annuity to a Man and his Wife for their Lives.

No. CCXLI.

Annuity to a Man and his Wife.

Know all &c. That &c. Whereas the above named (*obligee*) hath contracted with the above bounden (*obligor*) for the absolute purchase of one annuity or annual sum of £ to be paid unto the said (*obligee*) and his assigns during his life and after his decease to E. his wife and her assigns if she should survive him free from taxes and without any other deduction whatsoever by half yearly payments on the days hereinafter mentioned Together with a proportional part of the said annuity or annual sum of £ for the time which at the decease of him the said (*obligee*) shall have elapsed of the said annuity then growing due And the price and consideration for the purchase of the said annuity or annual sum of £ is £ sterling money of Great Britain and the sum of £ interest or share in capital joint stock Three per cent. Consolidated Bank Annuities *And whereas* the said (*obligee*) hath before the execution of the above written bond paid the said sum of sterling money to and transferred the said sum of £ Three per cent. Consolidated Bank Annuities into the name of the said (*obligor*) in the books of the Governor and Company of the Bank of England which payment and transfer the said (*obligor*) doth hereby acknowledge *And whereas* upon the treaty for the said purchase it was agreed that the costs and charges of procuring the said sum of £ upon the said annuity and of preparing and perfecting the securities for the same should be borne and paid by the said (*obligor*) *Now the Condition* &c. That if the above bounden (*obligor*) his executors or administrators do and shall well and truly pay unto the said (*obligee*) or his assigns during the term of his natural life one clear annuity or annual sum of £ by half yearly payments on or at the days and times following (that is to say) on the day of and on the day of the first half yearly payment to be made on the day of next ensuing the date of the above written bond And do and shall also if E. now the wife of the said (*obligee*) be living at his death well and truly pay or cause &c. unto the said E. D. yearly and every year during the then remainder of her life a like clear annuity or yearly sum of £ of &c. at or on the

Obligation.

Recitals.

Contract for purchase of an annuity.

Condition.

No. CCXLI.

*Annuity to a
Man and his
Wife.*

aforsaid half yearly days of payment the first payment of the last mentioned annuity to be made on the first of the said days which shall happen next after the decease of the said (*obligee*) And do and shall make all the said payments as well to the said (*obligee*) during his life as after his decease to the said E. D. if she survive him during the then remainder of her life without any deduction or abatement whatsoever out of either of the said annuities or yearly sums or any part thereof for or by reason of any parliamentary taxes or impositions whatsoever And also do and shall within ten days after the decease of the said (*obligee*) and E. his wife respectively in case he or she shall die in the interval between any of the half yearly days of payment well and truly pay unto the executors administrators or assigns of the said (*obligee*) or of the said E. his wife if she survive him a proportional part of the said annuity or annual sum of £ for the time which at the decease of the said (*obligee*) or E. his wife shall have elapsed of the half yearly payment then growing due Then &c.



No. CCXLII.

No. CCXLII.

Annuity Bond. Bond for securing an Annuity granted by a former Bond which has been lost.

Obligation.

Recital of
former bond.

Loss of bond.

Condition.

Know all &c. Whereas the said (*obligor*) by his bond or writing obligatory under his hand and seal bearing date &c. became bound to the said (*obligee*) in the sum of £ with a condition thereunder written for making the said bond void on payment by the said (*obligor*) his heirs executors or administrators to the said (*obligee*) of an annuity of £ for his life by half yearly payments on &c. in every year *And whereas* all arrears of the said annuity have been paid up and in full to the day of now last past *And whereas* the said bond has been lost and it hath been agreed between the said (*obligor*) and the said (*obligee*) that a fresh bond to replace the one that hath been lost should be executed by the said (*obligor*) at the expense of the said (*obligee*) *Now &c.* if the said (*obligor*) his heirs &c. do and shall from time to time during the life of the said (*obligee*) well and truly pay or cause to be paid unto the said (*obligee*) or his assigns one annuity or &c. of

£ on &c. in every year by even &c. payments clear of all No. CCXLII.
 deductions on any account whatsoever [the same to be in lieu Annuity Bond.
 and full satisfaction of the said annuity of £ secured to
 the said (*obligee*) by the said (*obligor*) as hereinbefore mentioned
 or recited and all arrears and half yearly payments thereof up
 to the day of now last past] and the first half yearly
 payment of £ hereby secured to become due on the
 day of next ensuing the date of the above written bond or
 obligation provided the said (*obligee*) shall be living at that time
 or if the said hereinbefore recited bond or obligation shall at
 any time hereafter be found or come to the hands of the said
 (*obligee*) or any other person as her agent or any action or suit
 at law shall be brought sued commenced or prosecuted under
 or by virtue of that bond or if it shall appear or be proved that
 any assignment hath been or shall be made by the said (*obligee*)
 of the benefit of the same bond Then and in any or either of
 such cases this obligation &c.

—◆—

*Bond to a Trustee for securing an Annuity to a Married Woman
 purchased with her separate Property, see post, BONDS (Mar-
 ried Woman).*

—◆—

Arbitration Bond, see ARBITRATION, ante, p. 322.

—◆—

Assignment of a Bond, see ASSIGNMENTS, pp. 360—364.

BAIL BONDS.

SECT. 1. The defendant, when arrested, “shall remain in custody When required.
 until he shall have given a bail bond to the sheriff or shall have made
 deposit of the sum indorsed in the writ of *capias*, according to the
 practice of the superior courts of law, 1 & 2 Vict. c. 110, s. 4; Arch.
 Pr. by Chitty, pp. 737—745, 9th ed.

<i>Bail.</i>	2. As to the form of the bond, it is necessary that it should be made to the sheriff himself by name of office, and that it be conditioned for the defendant's appearance at the return of the writ, and for that only, <i>Id. ub. sup.</i>
Form of the bond.	
Stamp.	3. The bail bond does not require a stamp, 5 Geo. 4, c. 41.



No. CCXLIII.

*Common Form
of a Bail Bond.*

Obligation.

Condition.

No. CCXLIII.

Common Form of a Bail Bond.

Know all &c. That we C. D. of &c. (*the defendant in the action*) E. F. of &c. and G. H. of &c. (*the bail*) are held and firmly bound to I. K. esquire sheriff of the county of in the penal sum of £ [*double the sum sworn to and indorsed on the writ*] of lawful &c. to be paid to the said sheriff or his certain attorney executors administrators or assigns for which payment well and truly to be made we bind ourselves and each of us for himself in the whole our and every of our heirs executors and administrators firmly by these presents Sealed with our seals dated &c. *The Condition* of the above written obligation is such that if the above bounden C. D. do appear (*a*) before our sovereign lady the Queen on to answer A. B. of a plea of trespass (*b*) the said &c. Then this obligation to be void otherwise to remain in full force and virtue.

Signed sealed and delivered by the
above named C. D. E. F. and
G. H. (being first duly stamped)
in the presence of

C. D. (L.S.)

E. F. (L.S.)

G. H. (L.S.)

M. N.

O. P.

(*a*) If in the Common Pleas, say, "before her Majesty's Justices at Westminster on &c." If in the Exchequer, "before the Barons of her Majesty's Court of Exchequer at Westminster on &c."

(*b*) Or, according to the *ac etiam* in the process, if by original, say, "do appear &c. on &c. wheresoever, &c. to answer A. B. of a plea &c." (*as the plea is*). If in the Exchequer, on a writ of *quo minus*, say, "to answer to A. B. the Queen's debtor of a plea of trespass whereby he is less able &c." Or, if on process of contempt, say, "to answer our sovereign lady the Queen of divers trespasses contempts &c. by him lately done and committed."

No. CCXLIV.

Special Bail Bond.

Know all &c. Whereas the above bounden (*obligor*) was on the day of taken by the said sheriff in the bailiwick of the said sheriff by virtue of the Queen's writ of *capias* issued out of her Majesty's Court of Queen's Bench [*or* "Common Pleas" *or* "Exchequer of Pleas"] bearing date at Westminster the day of to the said sheriff directed and delivered against the said C. D. and &c. [*as in the writ*] in an action at the suit of A. B. And whereas a copy of the said writ together with every memorandum or notice subscribed thereto and all indorsements thereon was on the execution thereof delivered to the said C. D. And whereas he is by the said writ required to cause special bail to be put in for him in the said court to the said action within eight days after execution thereof inclusive of the day of such execution Now &c. That if the said C. D. do cause special bail to be put in for him to the said action in her Majesty's said court as required by the said writ Then &c. Sealed &c.

No. CCXLIV.

Special Bail Bond.

Obligation.
Recital of
arrest.

Condition.

No. CCXLV.

Assignment of the Bail Bond (by Indorsement).

Obs. As to the assignments of bonds, see ASSIGNMENTS, Pref. sect. 2; see Arch. Pr. by Chitty, pp. 755, 756, 9th ed.

I the within named sheriff of have at the request of A. B. the plaintiff also within named assigned to him the said A. B. the within written bail bond and all benefit and advantage arising therefrom pursuant to the statute in that case made and provided *In witness* whereof I have hereunto set my hand and seal of office this day of .

Signed sealed and delivered by
the within named sheriff in the
presence of

S. S. Sheriff.

W. W.
T. W.

No. CCXLV.

Assignment of Bail Bond.

Common Form of a Bottomry Bond, see post, SHIPPING.

No. CCXLVI.

No. CCXLVI.

*Conveyance by
Infant.**Bond that an Infant, when of full Age, shall convey.**Obs.* As to conveyances by infants under the direction of the Court of Chancery, see PURCHASES, Pref. sect. 3.

Obligation.

Recital of will.

Contract for
purchase.Agreement to
enter into a
bond.

Know all Men &c. Whereas T. S. late of &c. deceased by his last will and testament in writing bearing date on or about the day of Did [among other things] give and devise all his freehold and copyhold messuages or tenements lands and hereditaments to be equally divided between his sons the above named (*obligors*) and (*infant*) *And whereas* the above named (*purchaser*) hath contracted with the said (*obligors*) for the purchase by him of the said messuages &c. *And whereas* the said (*obligors*) by an indenture bearing even date with the above written bond or obligation Did grant unto the said (*P.*) his heirs and assigns the said freehold messuages &c. and in the said indenture is contained a covenant by the said (*obligors*) to surrender and assure the said copyhold hereditaments unto the said (*P.*) his heirs and assigns *And whereas* the said (*infant*) is an infant of the age of years or thereabouts and the part or share of the said (*infant*) of and in the purchase money in the said indenture of release expressed to be paid to him was paid to him notwithstanding his infancy with the consent of the said (*obligors*) *And whereas* upon the treaty for the purchase of the said freehold and copyhold hereditaments it was agreed that the said (*obligors*) should by their bond guarantee unto the said (*P.*) his heirs and assigns a confirmation of the conveyance and assurance and covenant to surrender by the said in part recited indenture expressed to be made by the said (*I.*) of the said freehold and copyhold hereditaments or of the part share or interest of the said (*I.*) therein And should in the mean time secure unto the said (*P.*) his heirs and assigns the quiet possession and enjoyment of the same freehold and copyhold hereditaments as against the said (*I.*) and his heirs and those claiming under him or them or the said (*testator*) in manner hereinafter mentioned

Now the Condition of the above written obligation is such that if the said (*I.*) his heirs executors and administrators and every other person claiming or to claim by from through or under the said (*testator*) deceased shall and do within six calendar months next after the said (*I.*) shall attain the age of 21 years or in case of his decease under that age if the heirs executors and administrators of the said (*I.*) or other the person or persons claiming or to claim by from through or under him or the said (*testator*) deceased shall and do immediately after such heirs executors or administrators or other person or persons shall be competent at law so to do by good and sufficient conveyances surrenders and assurances in the law to the satisfaction of the said (*P.*) his heirs and assigns or his or their counsel in the law but at the costs of the said (*I.*) his heirs executors or administrators well and effectually convey surrender and assure unto the said (*P.*) his heirs and assigns or otherwise as he or they shall direct or appoint All the part and share in fee simple estate right title and interest of the said (*I.*) in and to the said freehold and copyhold hereditaments mentioned and comprised in the said recited indenture and expressed to be thereby granted and covenanted to be surrendered freed and discharged of and from all incumbrances previously made done and suffered by the said (*I.*) his heirs executors or administrators or the said (*testator*) deceased And also if in the meantime and until such conveyance surrender and assurance shall be made and executed by the said (*I.*) his heirs executors or administrators or those claiming through or under him or them or the said (*testator*) deceased as aforesaid the said (*P.*) his heirs and assigns shall and do from time to time and at all times peaceably and quietly have hold and occupy possess and enjoy the said freehold and copyhold hereditaments mentioned and comprised in the said recited indenture and expressed to be thereby granted and covenanted to be surrendered and assured with their appurtenances without any let suit trouble denial eviction or disturbance of from or by the said (*I.*) his heirs executors administrators or assigns or any person or persons claiming or to claim by from through or under him or them or any of them or by from through or under the said (*testator*) deceased Then &c.

No. CCXLVI.

Conveyance by
Infant.Condition for
conveyance.Quiet enjoy-
ment.

No.
CCXLVII.
Debt.

No. CCXLVII.

Bond to secure a Debt by Cognovit in an Action brought, and by Insurance of the Obligor's Life, in which the Father joins.

Obligation.
Recitals.

Debt and
action.

Agreement to
sign cognovit.

To insure life
of obligor.

Condition.

Know all Men &c. Whereas the above bounden I. M. the younger is and standeth justly indebted unto the above named T. S. in the sum of £ for money lent and advanced *And whereas* for recovery of the said debt T. S. hath commenced an action at law against the said I. M. the younger in her Majesty's Court of Common Pleas at Westminster *And whereas* the said I. M. the younger hath since applied to the said T. S. and requested him to suspend any further proceedings in the said action and hath proposed to confess the same by *cognovit* under his hand with liberty for the said T. S. to enter up judgment thereon in case default shall be made in payment of the said debt with interest and costs according to the condition herein-after expressed *And also* that he the said I. M. the younger would at his own costs and charges insure the said sum of £ upon his own life at the office at London and keep the same so insured until payment of the said debt with interest thereon and that in case of his death before the said debt and interest shall be so discharged the said T. S. should have the full benefit and advantage of such insurance and that the policy thereof should be taken out in the name of and for the benefit of the said T. S. and be deposited with him *And* that when the said debt and interest should be paid and discharged then that the said policy and all benefit thereof should be delivered up and vested in the said I. M. the younger upon his payment of any sums of money to the said I. M. the elder which he shall or may have advanced and paid to the said T. S. in virtue of these presents *And* hath further proposed that the said I. M. the elder should become jointly bound with him the said T. S. in manner hereinafter mentioned to all which the said T. S. hath agreed and having suspended all proceedings in the said action the said I. M. the younger hath on the day of the date of the above written obligation signed a *cognovit* as hereinbefore proposed and hath effected such insurance and hath deposited with the said T. S. the policy as hereinbefore agreed *Now therefore the Condition* of the above written obligation is such That if the above bounden I. M. the elder and I. M. the younger or either of them their or either of their heirs

executors or administrators shall pay or cause to be paid unto the said T. S. his executors administrators or assigns the sum of £ with interest at the rate of £ per cent. per annum on the decease of either of them the said I. M. the elder or I. M. the younger which shall first happen and shall in the mean time pay or cause to be paid unto the said T. S. his executors administrators and assigns interest for the same at or after the rate aforesaid by half yearly payments on the day of and day of in each year commencing from the day of the date of the above written obligation and shall at the proper costs and charges of him the said I. M. the younger pay or cause to be paid at the said insurance office the annual premium for the insurance so commenced as aforesaid from time to time and every year until the said debt and interest as aforesaid shall be wholly discharged *And also* in case of the decease of the said I. M. the younger if he the said T. S. his executors administrators or assigns shall be permitted and suffered without any hindrance delay or interruption of from or by any person or persons whomsoever to receive and take to his own use and benefit all and every sum or sums of money benefit emolument and advantage which shall or may then accrue or have become payable and recoverable upon or by virtue of the said policy of insurance of or from the said assurance company or any person or persons whomsoever it shall or may concern to pay the same in full liquidation discharge and satisfaction of the said debt and interest at that time due to the said T. S. his executors administrators or assigns Then &c.

No.
CCXLVII.
Debt.

Bond for the Payment of Money, see post, BONDS (PAYMENT).

No. CCXLVIII.

*Bond by Clerk and Surety for the faithful Service of an
Attorney's Clerk or Assistant.*

No.
CCXLVIII.
*Indemnity
(Attorney's
Clerk).*

Know all &c. Whereas the above bounden (*obligor*) is about to enter into the service of the said (*obligee*) as his clerk and assistant in the management of the business or profession of the

Obligation.
Recitals.

No.
CCXLVIII.
Indemnity
(Attorney's
Clerk).

said (*obligee*) of an attorney solicitor and conveyancer for and during such period as the said parties shall mutually agree upon he the said (*obligee*) paying unto the said (*obligor*) at or after the rate of £ per annum *And whereas* the said (*surety*) hath consented to join with the said (*obligor*) in the above written obligation as a security and protection to the said (*obligee*) his executors &c. of from and against all loss or damage that might be sustained by the said (*obligee*) by reason of the said (*obligor*) not duly accounting with the said (*obligee*) for all monies which may come to his hands or on account of the embezzlement misappropriation conversion or wilful defacement by the said (*obligor*) of any deeds writings evidences or effects whatsoever which shall come into the hands or possession of the said (*obligor*)

Condition.

Now the Condition &c. That if the above bounden (*obligor*) and (*surety*) their respective heirs executors or administrators or some or one of them do and shall from time to time and at all times hereafter well and truly account to and with the said (*obligee*) his executors and administrators of and for all monies property and things which shall or may come into the possession custody or power of him the said (*obligor*) as the clerk and assistant of the said (*obligee*) And do and shall at all times when required pay over to the said (*obligee*) his executors administrators or assigns all and every sum and sums of money which shall on any account be or appear to be coming due to him from the said (*obligor*) And do and shall save protect keep harmless and indemnified the said (*obligee*) his executors administrators and assigns of from and against all embezzlement misappropriation misapplication and conversion by the said (*obligor*) to the use of the said (*obligor*) of any monies goods chattels and effects belonging to the said (*obligee*) his executors administrators or assigns or to any suitor or client *And also* of from and against all defacements and cancelling or mutilation by the said (*obligor*) without the knowledge or consent of the said (*obligee*) or of any person duly authorized by him of any deeds writings evidences instruments books or papers of any description whatsoever which shall belong to the said (*obligee*) his executors or administrators or any suitor or client who shall have deposited the same with the said (*obligee*) or the said (*obligor*) as his clerk *And if* the said (*obligor*) shall and do well and faithfully in all things serve the said (*obligee*) as his assistant in the practice or profession of an attorney solicitor or conveyancer as aforesaid Then &c.

No. CCXLIX.

Another Form for a Merchant.

Now the Condition of the above written obligation is such That if the above bounden (*Clerk*) shall at all times hereafter so long as he the said (*C.*) shall continue in the service of and be employed by the above named (*Principal*) as his clerk or servant well faithfully and truly serve the said (*P.*) his master without consuming wasting embezzling losing misspending misapplying or unlawfully making away with any of the monies goods chattels wares merchandizes or effects whatsoever of the said (*P.*) his master or of any other person or persons whomsoever for which he the said (*P.*) his heirs executors or administrators shall or may by any law custom or usage whatsoever be anywise answerable or responsible which shall be committed to his the said (*C.'s*) charge care custody or keeping by reason or means of his said service or being clerk as aforesaid Or if the said (*C.*) shall neglect or refuse to account with him the said (*P.*) his executors administrators or assigns weekly or oftener if thereunto required by the said (*P.*) his executors administrators or assigns by reasonable notice in writing under his or their hands for that purpose to be given Then if the said (*C.*) and (*surety*) or one of them their or one of their heirs executors or administrators do and shall within months next after due proof thereof either by confession or otherwise make good and sufficient recompense satisfaction and payment unto the said (*P.*) his executors administrators or assigns for the said monies goods chattels wares merchandize or effects of him the said (*P.*) so lost wasted mispent or misapplied as aforesaid *And also* for all such loss damage or charge as he the said (*P.*) his executors or administrators shall suffer sustain or be put unto for or by reason or means of his the said (*C.'s*) neglecting or refusing to account as aforesaid Then &c.

No. CCXLIX.

Indemnity
(*Merchant's*
Clerk).

Condition.

No. CCL.

Bond that an Apprentice shall perform the Articles of his
Apprenticeship.

Now &c. That if the said I. B. the son shall and do from time to time and at all times during the said apprenticeship well and

No. CCL.

To perform
Covenants.

No. CCL.
To perform
Covenants.

truly observe perform fulfil and keep all and every the articles covenants clauses and agreements whatsoever in the said indenture contained and which on his part are to be performed and shall and do from time to time and at all times during the said term be faithful and just to the said I. L. his master in all his the said I. B.'s accounts receipts payments and all other dealings and doings in anywise relating to the said trade or employment or the affairs or business of the said I. L. and all other matters and things wherein as an apprentice or servant he shall or may be employed by or concerned for the said I. L. his executors, &c. Then &c.

No. CCLI.

No. CCLI.
Indemnity
(Partnership
Accounts).

Bond for Performance of the Covenants in a Deed of Copartnership by one who is admitted as a New Partner.

Recitals of
copartnership
deed.

Know all &c. Whereas by indenture dated and made between A. G. son of the above mentioned H. G. of &c. of the first part the said J. P. of the second part and the said F. E. of the third part the said A. G. J. P. and F. E. did thereby agree to be partners in the trade or business of a brewer and in the buying of barley and all other things belonging to the said business from the day of for the term of years from thence next ensuing determinable as therein is mentioned the said business to be conducted at &c. under the names and firm of A. G. & Co. or of &c. as therein is mentioned And it was by the said indenture agreed that they the said J. P. and F. E. their executors or administrators from time to time as the same should be necessary should pay and advance in equal proportions so much money as would be sufficient to carry on the said business with proper vigour and effect not exceeding the sum of £ unless two of the said parties should be desirous to increase the same and in that case not to exceed £ unless with the consent of all the said parties and that the said partnership should be managed and carried on under the terms provisions covenants and agreements therein declared and contained And whereas the said H. G. previous to the execution of the above mentioned indenture agreed with the said J. P. and F. E. to enter into and execute the above written bond Now &c. That if the said A. G. shall well and faithfully perform fulfil and

Agreement by
father to give
a bond.
Condition.

keep all and every the terms provisions covenants and agreements in the said indenture contained and agreed to be by him performed and done and if the said H. G. his heirs executors or administrators shall from time to time and at all times hereafter save defend keep harmless and indemnified the said J. P. and F. E. and each of them their and each of their heirs executors and administrators of from and against all losses costs charges and expenses which they or any of them shall or may sustain or be put unto for or by reason or means or on account of the non-performance of all or any of the terms provisions covenants and agreements in the said indenture contained and agreed to be by him the said A. G. performed and done so and in such manner that the said H. G. shall or may be answerable to the said J. P. and F. E. and their respective executors and administrators for such losses costs charges and expenses in such and the same degree as if he the said H. G. had been a party to the said indenture and had been thereby constituted a partner in the said joint business in the place and stead of the said A. G. and had entered into the covenants and agreements therein contained on the part of the said A. G. and no further Then &c.

No. CCLI.
Indemnity
(Partnership
Accounts).

No. CCLII.

Another Bond of Indemnity against old Partnership
Accounts, &c.

No. CCLII.

Know all &c. Whereas by articles of agreement of five parts bearing even date with the above written obligation the above mentioned A. B. and the said C. D. E. F. G. H. and H. I. have agreed to become partners in the business of banking upon the terms therein mentioned *And whereas* on the treaty respecting the said partnership the said A. B. hath proposed and agreed at the time of the execution of the said articles to give unto the said other parties the bond of himself and two other persons for the purpose hereinafter mentioned *And whereas* the said A. B. hath proposed I. C. and H. B. as the two persons to be joined with the said A. B. who have been approved by the said other parties *Now &c.* That if the said A. B. I. C. and H. B. or some or one of them their or some or one of their heirs executors or administrators do and shall from time to time and at all times hereafter well and sufficiently protect save

Obligation.
Recitals of
copartnership
articles.
Agreement to
enter into bond.
Sureties pro-
posed and ap-
proved.
Condition.

No. CCLII.

*Indemnity
(Partnership
Accounts).*

harmless and keep indemnified the said C. D. &c. and each and every of them and each and every of their executors administrators and assigns and each and every of their lands tenements goods and chattels and also the estate and effects of the said copartnership from and against all such actions costs losses charges damages and expenses which may at any time or times hereafter be instituted or commenced prosecuted or made against them the said C. D. &c. or against the lands &c. of them the said C. D. &c. or any of them or against the estate and effects of the said copartnership or which they the said C. D. &c. or any of them may hereafter bear pay or be put unto or become subject or liable to by reason of any of the debts contracts or engagements of him the said A. B. in respect of his late partnership with *And also* shall answer and make good unto the said C. D. &c. their executors administrators and assigns and to the estate of the said partnership the share and proportion of him the said A. B. under the before recited articles of all such losses costs damages and expenses which the said copartnership estate may from time to time during the continuance of the same suffer or sustain by any debt or debts which may be incurred by such copartnership or by any other means or in any other manner howsoever *And also* if the said A. B. his executors or administrators shall in all things well and truly perform fulfil and keep all and every the covenants clauses articles and agreements entered into by the said A. B. on his part to be fulfilled performed and kept according to the true intent and meaning thereof *And* shall from time to time and at all times hereafter well and sufficiently protect &c. the said C. D. &c. and each of them their and each of their lands &c. and also the effects and property of the said copartnership from and against all such charges losses damages and expenses as they or any of them may at any time hereafter bear suffer or sustain by reason of the breach of the said articles aforesaid Then &c.

No. CCLIII.

No. CCLIII.

*Indemnity
(Rents and
Covenants).*

*Bond of Indemnity against the Rents and Covenants
in a Lease.*

Obs. A lessee, notwithstanding his assignment, continues liable for the payment of rent and performance of covenants, but the liability

of an assignee is determined by his quitting possession, *Taylor v. Shum*, 1 B. & P. 21; unless where he is bound by his covenant or bond; see *Assignment of Leases, ante*, p. 388.

Know all &c. Whereas &c. [recite lease] And whereas by a certain indenture bearing even date with the above written obligation and made between the above named (*assignor*) of the one part and the above bounden (*assignee*) of the other part the said (*assignor*) For the considerations therein mentioned did assign and transfer the said message and premises comprised in the said in part recited indenture Subject to the payment of the rent reserved by the said lease and to the observance and performance of the covenants agreements stipulations and clauses therein contained which on the tenant or lessee's part are or ought to be paid done kept and performed *And whereas* upon the treaty for the said sale it was agreed that the above written obligation should be entered into for the security of the said (*assignor*) with the condition hereunder written for making void the same *Now &c.* That if the above bounden (*assignee*) his heirs executors or administrators do and shall from time to time and at all times well and truly pay or cause to be paid the rent or rents by the said in part recited indenture of lease reserved or made payable from or after the day of last past And do and shall perform and keep all and every the covenants and conditions in the same indenture contained which on the part or behalf of the (*lessee*) therein named his executors administrators or assigns are or ought to be observed performed and kept *And also* do and shall at all times save harmless and keep indemnified the said (*assignor*) his heirs executors and administrators and his and their estates and effects of from and against all actions suits proceedings costs damages claims and demands which he or they or any of them shall pay sustain or be put unto for or by reason of the nonpayment of the said rent or rents or any part of the same or of the breach non-performance or non-observance of the said covenants and conditions in the said lease contained or any of them Then &c.

No. CCLIII.
Indemnity
(Rents and
Covenants).

Obligation.
Recitals.

Assignment.

Condition.

No. CCLIV.

Bond of Indemnity against all Damages which may be sustained on account of the Non-production of a certain Deed.

Know all &c. Whereas by indenture of lease &c. [*recite lease, see Assignment of Lease*] *And whereas* by divers mesne assign-

No. CCLIV.
Indemnity
(Non-produce
tion of Deeds).

Obligation.
Recital of lease.
Mesne assign-
ment.

No. CCLIV. ments &c. particularly by an indenture of lease &c. [*recite assignment to the obligor*] *And whereas* [*recite sale by auction and that the said obligee was the purchaser*] *And whereas* by indenture of &c. [*recite assignment to obligee*] *And whereas* previously to the execution of the said indenture of assignment it was discovered that the said indenture of assignment bearing date the day of and made between &c. was either lost or mislaid and the said (*obligee*) at the request of the said (*obligor*) hath agreed to pay the purchase money upon the said (*obligor*) entering into the above written bond *Now* &c. That if the above bounden (*obligor*) do and shall from time to time and at all times hereafter save harmless and keep indemnified the said (*obligee*) his heirs executors and administrators his and their lands and tenements goods and chattels of and from all costs charges damages and expenses which the said (*obligee*) his heirs executors administrators or assigns shall or may bear be at or put unto on account of the said indenture of assignment being lost or on account of the said (*obligee*) being deprived of the custody of the same *And if* at any time hereafter the said deed of assignment shall be found and be delivered to the said (*obligee*) his executors administrators or assigns whole and uncanceled *Then* &c.

Indemnity
(Non-production of Deeds).
Lost deed.
Condition.

No. CCLV.

No. CCLV. *Bond of Indemnity from a Vendor to a Purchaser where Title Deeds were lost.*

Indemnity
(Loss of Title Deeds).
Obligation.
Recital of purchase.

Know all &c. *Whereas* by indenture bearing even date with but executed before the above obligation and made between

For the considerations therein mentioned certain messuages or tenements &c. situate at in the were conveyed unto the said (*Purchaser*) his heirs and assigns but the title deeds or evidences of title to the said premises being lost or mislaid the said (*Vendor*) hath agreed to save harmless and keep indemnified the said (*P.*) his heirs and assigns against all persons claiming any right or title to the said premises or part thereof in manner hereinafter expressed *And also* that in case the said title deeds and evidences of title to the said premises shall at any time hereafter be found the same shall be delivered to the said (*P.*) his heirs or assigns whole and uncanceled

celled *Now &c.* That if the said (V.) his heirs executors administrators or assigns do and shall from time to time and at all times hereafter save harmless and keep indemnified the said (P.) his heirs executors administrators and assigns of from and against all mortgages and other charges and incumbrances anywise affecting the said messuages or tenements and premises so conveyed as aforesaid or any part thereof and against all and every person and persons whomsoever claiming any estate right or title of in or to the same or any part thereof And if the said title deeds and evidences forming a complete and perfect title to the said premises shall at any time be delivered up to the said (P.) his heirs or assigns whole and uncanceled without fraud or delay Then &c.

No. CCLV.
Indemnity
(Loss of Title
Deeds).

Condition.

No. CCLVI.

Bond of Indemnity on the Mortgage being paid off on Account of the Loss of the Mortgage Deeds.

No. CCLVI.
Indemnity
(Loss of Mort-
gage Deeds).

*Know all &c. Whereas [recite original mortgage deducing title to the testatrix And that testatrix appointed above bounden obligor her son and heir at law to be her sole executor] And whereas [recite the will of the mortgagor whereby he devised all his real estates to the above named obligees in trust to sell the same and discharge the mortgage] And whereas [recite reconveyance from the said obligor to the said obligee as trustee of even date with the above obligation] And whereas the several deeds or writings hereinbefore recited [except the lease for a year upon which the said recited indenture of mortgage was grounded] have been accidentally lost or mislaid And it was therefore agreed that the said (obligor) should enter into the above written bond &c. Now &c. If the said (obligor) his heirs &c. do and shall from &c. hereafter save &c. [see last *Precedent*] the said (obligees) their heirs executors administrators cestui que trust and assigns of from and against (a) all manner of actions suits and proceedings whatsoever at law or in equity which shall or may be brought &c. against the said (obligees) their &c. And if the said*

Obligation.
Recitals.

(a) In the case of title deeds, say, "against all mortgages and other charges and incumbrances anywise affecting the said messuages and premises and against all and every person and persons whomsoever claiming any estate right or title in or to the same or any part thereof."

No. CCLVI. mortgage deeds shall at any time be found and the same be
Indemnity
 (Loss of Mort- delivered up to the said (*obligees*) (*a*) without fraud or delay
 gage Deeds). Then &c.



No. CCLVII.

No. CCLVII.

Indemnity
 (*Surety*).

Bond to indemnify a Surety against the Penalties of a former Bond.

Obs. Without a bond of this description, called a counter-bond, a surety who pays the debt of his principal is considered merely as a simple contract debtor, *Copis v. Middleton*, 1 Turn. & R. 224; *Jones v. David*, 4 Russ. C. C. 277. But now a surety who discharges the liability for a debt which he has paid, is entitled to an assignment of all the securities held by the creditor, 19 & 20 Vict. c. 97, s. 5.

Obligation.
 Recitals.

Know all &c. Whereas the above named (*Surety*) at the request of the above bounden (*Obligor*) is in and by a certain bond or &c. bearing even date herewith together with the said (*O.*) held and firmly bound unto E. F. of &c. in the penal sum of £ being the only proper debt of the said (*O.*) with a condition thereunder written for making void the same on payment by the said (*O.*) and (*S.*) or either of them their or either of their heirs executors or administrators unto &c. [*sum of money with interest*] as in and by the said in part recited obligation and condition reference being thereto had will more fully appear *And whereas* the said (*O.*) hath agreed to execute the above written obligation for indemnifying the said (*S.*) by reason of his having become surety as aforesaid *Now &c.* That if the above bounden (*O.*) his heirs executors or administrators do and shall pay or cause to be paid unto the said E. F. his executors administrators or assigns the sum of £ with interest for the same on the day of next ensuing the date of the said recited obligation according to the true intent and meaning of the condition thereunder written and if the said (*O.*) his heirs executors or administrators shall from time to time and at all times hereafter save protect and keep harmless and indemnify the said (*S.*) his heirs executors and administrators and his and their lands and tenements goods and chattels from and against all

Condition.

(*a*) In the case of title deeds, say, "whole and uncanceled without fraud or delay."

claims demands losses costs charges actions suits and damages whatsoever which he or they or any of them shall or may at any time hereafter sustain or be put unto by reason or on account of the said in part recited bond or obligation or any matter or thing relating thereto Then &c.

No. CCLVII.

Indemnity
(*Surety*).

No. CCLVIII.

Bond to indemnify against paying Rent where the Title is in Question.

No. CCLVIII.

Indemnity
(*Payment of*
Rent).

Know all &c. Whereas there is a suit depending between the above bounden (*obligor*) and others touching the right and interest in the dwelling house of the said (*obligee*) situate &c. *And whereas* the said (*obligee*) hath agreed to pay the rent of the said house to the said (*obligor*) yearly as the same shall grow due upon his agreeing to indemnify him therefrom *Now &c. if* the said (*obligor*) his &c. do and shall well and truly pay or cause to be paid all such rent sum and sums of money charges and damages whatsoever as shall by due proceedings in law be adjudged or decreed against him the said (*obligee*) his executors or administrators and all other costs and damages whatsoever which he the said (*obligee*) his executors or administrators shall sustain or be at by reason of any action suit or forfeiture whatsoever which shall or may happen to the said (*obligee*) his executors administrators or assigns by reason of paying the said rent or any part thereof to the said (*obligor*) his executors administrators or assigns in manner aforesaid Then &c.

Obligation.

Recital of suit.

Condition.

No. CCLIX.

Bond to indemnify the Purchaser of an Estate against Mortgage Money, where no Evidence can be obtained of its having been paid off.

No. CCLIX.

Indemnity
(*Payment of*
Mortgage
Money).

Know all &c. Whereas &c. [recite mortgage deed and other deeds affecting the estate] *And whereas* from the recitals contained in the indenture of release of the day of and the length of time since the dates and executions of the said recited indentures of the day and the day &c. there

Obligation.

Recital of deeds.

No. CCLIX. is ground to presume that the sum of £ by the indenture
Indemnity
(Payment of
Mortgage
Money). &c. secured unto the said (*mortgagee*) by way of mortgage as
aforesaid together with all interest upon or in respect of the said
sum of £ has been long since paid off or satisfied but no
positive evidence of such payment and release can be obtained
at present It was therefore agreed upon the treaty for the afore-
said purchase that the said (*P.*) should be indemnified by the
said (*V.*) against the principal sum of £ and all interest
Condition. as aforesaid Now &c. That if the above bounden (*obligor*) do
and shall well and sufficiently save harmless &c. the said mes-
suages lands &c. comprised in and expressed to be released by
an indenture of release bearing even date with the above written
bond And the said (*P.*) and his heirs &c. in respect thereof of
from and against the said sum of £ and the interest thereof
and every part thereof and of from and against all actions and
suits at law or in equity which shall be brought &c. and all costs
&c. in respect of the said sum of £ and interest as afore-
said and for or on account of any act matter or thing in anywise
relating thereto Then &c.

—◆—

No. CCLX.

No. CCLX.
Indemnity
(Lost Bond).
Obligation.
Recitals of lost
bond.
Satisfaction of
the bond.
Condition.

Bond of Indemnity on paying a Lost Bond.

Know all &c. Whereas the above named master and wardens
and society by their bond or obligation under their common seal
bearing date &c. became bound to the above named (*obligee*) in
the penal sum of £ conditioned for the payment of the
sum of £ unto the executors administrators or assigns of
the said (*obligee*) at the end of months next after the de-
cease of the said (*obligee*) with such profits upon the same as
upon the then last general audit for the stock raised by and
among the members of the said society for the making and pre-
paring &c. should appear to be due to him and unpaid as in and
by the said bond when produced will more fully appear And
whereas the said bond is alleged to be lost or so mislaid that the
same cannot be found And *whereas* the said master wardens
and society on the day of the date hereof at the request of the
said (*obligor*) and on his promise of indemnity have made him
full satisfaction of and for the said bond Now &c. That if the
above bounden (*obligor*) his heirs executors or administrators or

any or either of them do and shall in case the said bond or obligation shall happen to be found or come to the hands custody or power of him them or any of them or of any other person for them deliver or cause the same to be delivered unto the then master and wardens of the said society in order to be made void cancelled and destroyed and also shall and do from time to time and at all times hereafter save and keep harmless &c. the said master wardens and their successors of and from &c. for or by reason of the said bond or obligation or any of the money thereby paid or for touching and concerning the same in anywise howsoever Then &c.

No. CCLX.

Indemnity
Bond).

No. CCLXI.

Bond to indemnify a Person from a Bill that is Lost, upon his granting another.

No. CCLXI.

Indemnity
(Lost Bill).

Obs. By the 8 & 9 Will. 3, c. 17, s. 3, the drawer of a bill may be required, in case it be lost, to give another bill on his being indemnified.

Know all &c. Whereas the above named (*obligee*) drew a bill No. dated &c. on Messrs. A. & Co. for the sum of £

Obligation.

Recital of loss
of bill.

payable to the order of E. D. which said note was afterwards paid to L. & Co. and hath since by them been lost or mislaid

And whereas the said (*obligee*) at the request of the said L. & Co. hath given them another bill of the same value and tenor as the

Another bill
given.

bill so lost on their indemnifying him &c. against all claims and demands to be made upon him in respect of the said lost bill

Now &c. That if the above bounden L. & Co. or either of them or either of their heirs executors administrators or assigns do and

Condition.

shall at all times hereafter save and keep harmless and indemnified the said (*obligee*) his executors &c. and every of them and

their and every of their lands tenements goods and chattels whatsoever of and from the payment of the same bill and of and

from all and all manner of actions suits claims and demands whatsoever for or on account of the same bill and of and from

all damages costs and charges whatsoever which he or they may at any time hereafter sustain bear or be put unto by reason or

means of the nonpayment of such lost bill And if the said L. & Co. do and shall when and as soon as the said note shall

be found deliver the same to the said (*obligee*) Then &c.

No. CCLXII.

No. CCLXII.

*To Refund
Legacy.**Bond from Legatee to Executor on Payment of Legacy to Refund
in case of Deficiency of Assets (a).*Bequest of
legacy.That the
amount of the
debts has not
been ascer-
tained, but
belief that there
are sufficient
assets.Agreement to
pay legacy.Condition that
if personal
estate shall
prove insuffi-
cient to dis-
charge debts
and legacies,and legatee
shall refund his
proper portion,and shall in-
demnify exe-
cutor from all
demands.

Know all &c. [recite will of testator bequeathing legacy, death of testator, and probate of his will] And whereas the amount of the debts of the said testator hath not yet been ascertained but it is believed that the assets of the said testator will be sufficient to pay his debts and the several legacies given by his said will *And whereas* the said (*obligee*) [executor] hath accordingly agreed to pay to the said (*obligor*) his said legacy of £ on his entering into the above written obligation with such condition as is hereinafter contained *Now the Condition* of the above written obligation is such that if the personal estate of the said testator deceased shall not prove sufficient to pay his just debts and funeral and testamentary expenses and all the pecuniary legacies given by his said will Then if the said (*obligor*) his heirs executors or administrators shall within days next after notice thereof to him or them given in that behalf and on proof of such deficiency well and truly repay and refund to him the said (*obligee*) his executors administrators or assigns the said sum of £ so paid to him as aforesaid or so much thereof as shall be more than was coming due to him out of the personal estate of the said (*testator*) in respect of the said legacy of £ given to him by the said in part recited will as aforesaid in proportion to the other pecuniary legacies under the said will *And also* if the said (*obligor*) his heirs executors or administrators shall from time to time and at all times hereafter save defend keep harmless and indemnified the said (*obligee*) his executors and administrators and the estate of the said testator of and from all costs damages and expenses which shall or may happen or come to him or them or the estate of the said testator for or by reason of the said (*obligee*) having paid the said (*obligor*) the said sum of £ in full for the said legacy as aforesaid or any matter cause or thing relating thereto Then &c.

(a) As to refunding legacies, see Wms. on Executors, Part III., Bk. 3, s. 10.

No. CCLXIII.

No. CCLXIII.

Bond of Indemnity to a Purchaser against Two Legacies and an Annuity charged on Hereditaments which the Devisee has contracted to Sell.

*Indemnity
(Charges under
a Will).*

Know all &c. Whereas &c. [recite the will of R. P. whereby he bequeathed two legacies of £ each to his two grandchildren S. P. and T. P. upon their attaining their age of twenty-one and an annuity of £ a year to his brother H. P. and that the said testator charged the said legacies and annuity upon the hereditaments thereafter devised to his son J. P. in fee] And whereas the said (Purchaser) hath contracted with the said (Vendor) for the absolute sale to him of all &c. and the same pieces or parcels of land hereditaments and premises have been duly conveyed to the said (P.) his heirs and assigns in and by an indenture bearing even date with the above written bond And whereas upon the treaty for such purchase it was agreed by and between the said (V.) and (P.) that the said (V.) should enter into the above mentioned bond by way of indemnity to the said (P.) against the two said legacies of £ and £ and the said annuity of £ so given and bequeathed by the said will with a condition for making void the same as hereinafter is expressed Now &c. That if the said (V.) his heirs executors or administrators shall pay or cause to be paid to the said S. P. and T. P. when they shall respectively attain the age of twenty-one years the said legacies or sums of £ and £ and interest according to the direction of the said will and shall at the costs and charges of the said (V.) his heirs and assigns produce and show to the said (P.) his heirs and assigns good and effectual receipts and discharges for such legacies duly signed by the said S. P. and T. P. after they shall have attained their respective ages of twenty-one years and shall at the like costs and charges give to the said (P.) his heirs and assigns true and attested copies of such receipts and discharges if he or they shall request the same And shall pay to the said H. P. the said testator's brother the said annuity of £ when the same shall from time to time become due and payable And shall from time to time and at all times hereafter save defend keep harmless and indemnified the said (P.) his heirs and assigns and his and their lands tenements goods and chattels and particularly the said hereditaments and premises so purchased by the said

Obligation.
Recitals of
will, &c.

Condition.

No. CCLXIII. (*P.*) as aforesaid of from and against all actions suits at law or in equity claims demands ejectments and evictions by reason or on account of the said two legacies or sums of £ and £ and all interest which hath accrued or may accrue due thereon respectively and of from and against the said annuity of £ so bequeathed as aforesaid and also of from and against all costs charges and expenses which he or they may sustain expend or be put unto for or in respect of the said legacies &c. or the said annuity &c. or any or either of them or any part or parts thereof respectively or of any matter or thing relating thereto Then &c.



No. CCLXIV.

No. CCLXIV.

Sale. Joint and Several Bond of Indemnity on the Sale of an Estate.

<p>Obligation.</p> <p>Recital of conveyance.</p> <p>Agreement to enter into bond.</p> <p>Condition.</p>	<p><i>Know all &c. Whereas</i> by indenture bearing date &c. divers lands and hereditaments situated at were granted and conveyed to the above bounden (<i>obligors</i>) in consideration of the sum of £ <i>And whereas</i> in consideration of the sum of £ paid to the said (<i>O.</i>) before the date of the above written bond or obligation the receipt whereof they the said (<i>O.</i>) do hereby acknowledge and in pursuance of an agreement in writing bearing date and entered into with them the said (<i>O.</i>) they the said (<i>O.</i>) have agreed to enter into the above written bond &c. subject to the condition hereinafter contained <i>Now &c.</i> if the said (<i>O.</i>) or either of them their or either of their heirs executors and administrators do and shall from time to time and at all times hereafter at his and their own costs and charges save defend keep harmless and indemnified the said (<i>Purchaser</i>) his heirs appointees executors administrators or assigns and every of them and his and their and every of their lands tenements goods chattels and effects and in particular the said manor &c. hereinbefore described of from and against all and all manner of ejectments evictions suits at law or in equity debts payments costs losses charges damages and expenses which from time to time or at any time or times hereafter shall or may be brought sued or prosecuted against or incurred paid and sustained by the said (<i>P.</i>) his heirs &c. by reason of any entry or entries claim or claims to be made in any suit at law and in equity against the said (<i>P.</i>) by any person or persons whomso-</p>
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ever in respect of the said manor or by reason of any defect of title [if any exist] and if the said (*O.*) or one of them their or one of their heirs executors or administrators do and shall in the event that the said (*P.*) his heirs &c. for the want of a title to the said manor &c. or any part of the same shall be evicted in any suit at law or in equity pay or cause to be paid to the said (*P.*) his heirs &c. any sum which shall be the then value of the said manor &c. to be estimated by two indifferent persons one to be appointed by the said (*O.*) their heirs &c. and the other by the said (*P.*) his heirs &c. or in case they cannot agree then by such person as they shall appoint or in case either party shall refuse or neglect to appoint an arbitrator then by the referee of the other party Then &c.

No. CCLXIV.
Sale.

—◆—

No. CCLXV.

Bond of Indemnity to Trustees under the Obligor's Marriage Settlement for having permitted him to convert Trust Monies to his own use.

No. CCLXV.
Indemnity
(Trustees).

Know all &c. Whereas &c. [recite marriage settlement] And Obligation.
whereas the said (obligees) trustees named in the said recited Recitals.
indenture of settlement have at various times at the request of
the said (obligor) authorized him to sell and dispose of certain The sale.
parts of the said sum of £ Three per Cent. Consolidated
Bank Annuities and in pursuance of the power so given him he
hath converted the monies which have arisen therefrom to his
own use And whereas the said (obligees) have applied to the
said (obligor) for the re-investment in their names of the said
sum of £ so disposed of as aforesaid And it being in-
convenient to the said (obligor) to comply with such request he
hath proposed if the said (obligees) will allow him a reasonable
time for the re-investment of the same sum to indemnify them Condition.
in the mean time by executing the above written obligation Now
&c. if the said (obligor) shall save defend keep harmless &c. the
said (obligees) their and every of their heirs executors &c. lands
&c. and also the heirs of the said A. B. deceased of &c. by
reason or means or on account of the said (obligees) or any of
them having authorized the sale and transfer by him the said
(obligor) of the said sum of £ or any part thereof or for
or by reason or on account of the said (obligor) not having in-

No. CCLXV. vested or replaced the same £ &c. in the names of them
Indemnity
(Trustees). the said (*obligees*) in the books of the Governor and Company
of the Bank of England or for or by reason or means of any
act matter or thing in anywise relating to the premises
Then &c.



No. CCLXVI.

No. CCLXVI.

To secure
Money to Wife.

Bond for securing a Sum of Money by the intended Husband to the Wife and the Issue of the Marriage.

Obs. A bond conditioned for the payment of money after the obligor's death, given to a woman in contemplation of the obligor's marrying her, and intended for her benefit, is held to be a good marriage contract at law, and is not extinguished by the subsequent marriage of the parties, *Milbourne v. Ewart*, 5 T R. 381. Courts of equity consider such bonds as agreements for a settlement of which specific performance will be strictly enforced, as well for the benefit of the issue of the marriage as for the wife, *Prebble v. Boghurst*, 1 Swanst. 309.

Obligation.
Recitals.

Know all &c. Whereas a marriage is intended to be shortly solemnized between the above bounden (*obligor*) and M. the daughter of the above named R. P. And whereas the said (*obligor*) in consideration of the marriage portion of the said M. P. hath agreed that if the said intended marriage shall take effect and the said M. P. shall happen to survive him the said (*obligor*) and there shall not be any child or children of the said marriage nor any issue of any such child or children then living or afterwards born alive the sum of £ shall be paid out of his estate and effects unto the above named (*obligees*) or the survivor of them or the executors &c. upon trust to pay the same to the said M. P. for her own proper use but in case the said M. P. shall happen to survive him the said (*obligor*) and there shall be any child or children of the said marriage or any issue of such child or children then living or afterwards born alive Then the heirs executors or administrators of the said (*obligor*) shall within months next after his decease pay or cause to be paid unto the said (*obligees*) or the survivor &c. the full sum of £ Now &c. That if the said intended marriage shall take effect and the above named M. P. shall survive the said (*obligor*) and there shall not be any child or children of the said marriage nor any issue of such child or children who shall

Condition.

be living at the decease of him the said (*obligor*) or afterwards born alive Then and in such case if the heirs executors or administrators of the said (*obligor*) shall immediately after the decease of the said (*obligor*) pay or cause to be paid unto the said (*obligees*) or the survivor &c. the sum of £ of lawful money of Great Britain with interest thereon after the rate of £ per cent. per annum to be computed from the day of the decease of the said (*obligor*) *Upon trust* to pay the same unto the said M. P. for her own proper use and benefit or in case the said M. P. shall happen to survive the said (*obligor*) and there shall be any child or children of such marriage or any issue of such child or children living at such the decease of the said (*obligor*) or afterwards born alive Then and in such case if the heirs executors or administrators of the said (*obligor*) shall within months next after the decease of the said (*obligor*) pay or cause to be paid unto the said (*obligees*) or the survivor &c. the sum of £ of lawful money aforesaid with interest thereon after the rate and to be computed as aforesaid to be held by the said (*obligees*) their executors administrators and assigns upon and for such trusts intents and purposes as are intended to be expressed and declared of and concerning the same by an indenture bearing even date with the above written bond and made between (*parties*) Then &c. (*a*)

No. CCLXVI.

*To secure
Money to Wife.*

No. CCLXVII.

Bond from a Father to pay a Sum for his Daughter's Fortune within a certain Time after the Marriage.

No. CCLXVII.

*Daughter's
Fortune.*

Know all &c. Whereas a marriage hath been agreed upon and is intended soon to be had and solemnized between (*Intended Husband*) of &c. and (*Intended Wife*) spinster daughter of the above bounden (*Father*) by M. B. his wife *And whereas* the said (*F.*) upon the treaty for the said marriage proposed and agreed to secure the sum of £ as and for the portion or fortune of the said (*I. W.*) his daughter to be paid to the above named M. B. and G. W. at or before the end of months next after the said intended marriage with interest for the said

Obligation.

Recital of intended marriage.

Agreement.

(a) The trusts of the sum secured to be paid to the trustees should be declared by a separate deed.

No. CCLXVII. sum of £ from the solemnization thereof at the rate of 4*l.*
Daughter's for every 100*l.* by the year *Upon trust* and for the intents and
Fortune. purposes hereinafter mentioned *Now &c.* That if the said
 Condition. intended marriage shall not be had and solemnized or if the said
 intended marriage shall be had and solemnized and the said
 (F.) his executors or administrators do and shall in such case
 pay or cause to be paid unto the said M. B. and G. W. their
 executors administrators or assigns the sum of £ at or
 before the end of months next after the said intended
 marriage shall be had and solemnized with interest for the said
 sum of £ from the said solemnization at the rate &c.
 without any deduction or abatement whatsoever *Upon such*
trusts for such intents and purposes and with under and sub-
 ject to such powers provisoes agreements and declarations as
 are or shall be declared and expressed concerning the same sum
 of £ with the interest thereof in and by an indenture
 already prepared and engrossed and bearing or intended to bear
 even date with the above written bond or obligation and made or
 expressed to be made between (I. H.) of the first part the said
 (T.) and (I. W.) of the second part and the said M. B. and
 G. W. of the third part Then &c.



No.
CCLXVIII.

Married
Woman.

No. CCLXVIII.

Bond to a Trustee for securing Annuity to a Married Woman
purchased with her separate Estate.

Obs. This requires an *ad valorem* stamp as on the grant of annuity,
 see *ante*, ANNUITY.

Obligation.
 Recital of be-
 quest to the
 separate use
 of wife.

Receipt of le-
 gacy by wife.

Agreement by
 wife.

Know all &c. Whereas under and by virtue of the last will and
 testament of S. M. deceased bearing date &c. E. A. the wife of
 G. A. and niece of S. M. became entitled to the sum of £
 free from the debts and control of her husband and for her
 sole and separate use wherewith he was not to intermeddle and
 it was directed that her receipt alone should be a sufficient
 discharge And whereas the said sum of £ was paid to
 the said E. A. and has continued in her hands until the pay-
 ment thereof as hereinafter is mentioned And whereas the
 said E. A. hath contracted and agreed with the above bounden
 (obligor) for the purchase of an annuity or yearly sum of

£ for her life and the true and *bouâ fide* consideration to be advanced and given for the purchase of the said annuity is the sum of £ so bequeathed to or in trust for the said E. A. as aforesaid which she the said E. A. by herself or her agent hath paid to the said (O.) *And whereas* the said E. A. hath requested that the above named (*trustee*) may be a trustee for securing the said annuity to her for her sole and separate use in manner hereinbefore mentioned *Now &c.* That if the said (O.) his heirs executors administrators or assigns do and shall from time to time during the natural life of the said E. A. well and truly pay or cause to be paid unto the said (T.) his executors administrators or assigns one annuity or clear yearly sum of £ of &c. by quarterly payments &c. to be made &c. in every year by even and equal portions and clear of all deductions on any account whatsoever *And* do and shall make the first quarterly payment of the said annuity on &c. next ensuing the date of the said bond or obligation *And* in the event of the death of the said E. A. between or in the interval of any two of the said quarterly days of payment the said (O.) his heirs &c. do and shall also well and truly pay or cause &c. without any deduction &c. whatsoever such part of the said annuity or clear &c. of £ as shall be in proportion to the time or number of days which inclusive of the day of the decease of the said E. A. shall have elapsed prior to such decease and after the day of payment next and immediately preceding that event *Then &c.*

No.
CCLXVIII.
*Married
Woman.*

Underwritten Declaration of Trust in respect of this Bond.

It is hereby declared and agreed by and between the said E. A. and the said (T.) with the consent of (*Husband*) testified by their subscribing their names and affixing their seals to these presents That the above written bond given and entered into by the said (O.) to the said (T.) and the said annuity granted and secured to the said (T.) by the above written bond is granted and secured to him *Upon trust* That the said (T.) his executors administrators or assigns do and shall receive the said annuity when and as the same shall become due and payable and after deducting all expenses attending the recovering and receiving the same do and shall pay the same annuity unto such person or persons and for such uses intents and purposes as the said E. A. as well when married as single and notwithstanding her coverture

No.
CCLXVIII.
*Married
Woman.*

by her present or any future husband and either with or without any anticipation of the growing payments thereof and at any time or times and from time to time either by any note or memorandum under her hand or by her last will or any writing in the nature of a will shall direct order appoint or bequeath the same And in default of such direction order appointment or bequest or as to so much thereof of which no such direction &c. shall be made shall from time to time pay the same to the said E. A. or otherwise permit and suffer her the said E. A. to receive the same for her own sole use and benefit separate and apart from her present or any future husband and so and in such manner that the same may not be under his control or liable to his debts disposition thereof or intermeddling therewith *And* in case of the death of the said E. A. before the receipt of the said annuity or the arrears thereof without making any such direction &c. as aforesaid Then as to so much as shall be due or payable after her decease *In trust* for the person or persons who at her decease shall be her next of kin *And* it is also hereby declared and agreed by and between the said E. A. and the said (T.) that all and every the receipt or receipts which shall be given by the said E. A. or her appointee or appointees either to the said (O.) his heirs executors administrators or assigns or to the said (T.) his executors administrators or assigns for all or any part of the said annuity &c. shall be a sufficient discharge or sufficient discharges to the persons paying the same for so much as shall be thereby acknowledged to have been received *And* it is hereby further declared and agreed that when and so often as all or any part of the said annuity of £ or the arrears thereof shall be paid to the said (T.) his executors &c. without any previous directions to the contrary by writing under the hand of the said E. A. That then and so often the said (O.) his heirs &c. shall from the time of such payment be acquitted and discharged of and from the payment so made and shall not be required to see to the application of the said money or be accountable or answerable for the misapplication or nonapplication of the same *In witness &c.*



No. CCLXIX.

Condition to marry a Woman, or, in Default thereof, to pay a Sum of Money.

No. CCLXIX.

Promise to Marry.

Obs. 1. A condition to marry no other woman than the obligee, To marry. she not being bound to marry the obligor, has been held to operate in restraint of marriage, and therefore void, *Low v. Peers*, 4 Burr. 2225.

2. A bond to procure a marriage, called a marriage brocage-bond, is bad, being contrary to the policy of the law, *Hall v. Keane*, Show. P. C. 76. Courts of equity will not only decree such bonds to be delivered up, but also any sum paid to be refunded, *Debenham v. Ox*, 1 Ves. 275.

The Condition of this obligation is such that if the above bounden (*obligor*) do on or before the marry and take to wife E. D. daughter of the above named C. D. (a) provided the said E. D. will thereunto assent and the laws of the realm permit the same or if it shall happen that the said A. B. shall not marry and take to wife the said E. D. as aforesaid if then he the said A. B. his executors or administrators do and shall well and truly pay or cause to be paid unto the said E. D. her executors administrators or assigns the sum of £ of lawful money &c. on the day of next ensuing the said day of above mentioned and limited for the said marriage Then &c.

No. CCLXX.

Bond to permit a Wife to live separate from her Husband.

No. CCLXX.

Wife to live separate.

Know all &c. Whereas I. A. the wife of the above bounden A. A. by virtue of a certain indenture bearing date &c. and made between the said A. A. of the one part and the said (*trustees*) of the other part now lives separate and apart from the said A. A. her said husband and follows the business of making and selling And the said A. A. did agree that his said wife should have and receive all benefit arising thereby or by any other trade or business which she might think fit to follow to and for her own separate use and support therewith and that

(a) As to the necessity of this proviso, see *Obs.* 1.

No. CCLXX. he the said A. A. was not to intermeddle or have any profit or advantage therefrom so as she the said I. A. did not and should not contract any debt or debts for which the person or effects of her said husband should or might be sued charged or incumbered in any manner howsoever And it was further agreed that the said A. A. should enter into the above written obligation with the condition hereunder written for making void the same *Now &c.* That if the said A. A. do and shall from time to time and at all times during the natural life of the said I. A. permit and suffer the said I. A. to live separate and apart from him and to have and receive all profit benefit and advantage arising or which shall arise from her said trade or business of making and selling or any other trade or business which she shall follow or employ herself in to and for her own separate use support and maintenance without any account suit trouble or molestation whatsoever and without acting or doing or causing or permitting to be done any act matter or thing whatsoever whereby or wherewith or by means or occasion whereof the said I. A. shall or may be molested or incumbered by any ways or means whatsoever or if the said A. A. his heirs executors or administrators or his or their lands or tenements goods and chattels shall at any time or times hereafter be sued attached or otherwise charged or incumbered for or by reason or means of any debt or debts which his said wife hath contracted or shall or may contract Then and in either of the said cases this obligation to be void otherwise &c.

Condition.

*Wife to live
separate.*

No. CCLXXI.

Mortgage Bond.

No. CCLXXI.

Mortgage.

Obs. 1. It was formerly understood, that a mortgagee taking a pledge to himself, took it in satisfaction of the debt, and could not, therefore, recover by an action on the bond, in case the estate on sale and foreclosure should prove inadequate; but it is now held, that an action may be brought on the bond for the difference; but this will, however, open the foreclosure, and afford an opportunity to redeem, *Tooke v. Hartley*, 2 Br. C. C. 125; *Schoole v. Sall*, 1 Sch. & Lef. 176.

Stamp.

2. Where a bond is given for securing the payment of a sum not exceeding 1,400*l.*, previously secured by a mortgage or writing charged

with the same duty as a mortgage, it requires a stamp of only 1*l.*; but when the sum exceeds 1,400*l.*, a stamp duty of 1*l.* 15*s.*, 13 & 14 Vict. c. 97, Sched. tit. Bond. No. CCLXXI.
Mortgage.

Know all &c. *Now &c.* That if the above bounden (*obligor*) shall pay or cause to be paid unto the above named (*obligee*) his &c. the full sum of £ of &c. with interest for the same after the rate of £ for every 100*l.* for a year upon the &c. next ensuing the date of the above written obligation without any deduction or abatement therefrom for or in respect of any charges assessments or other matter cause or thing whatsoever according to the proviso or condition contained in a certain indenture bearing even date with the above written obligation and made or expressed to be made between the said (*obligor*) of the first part the said (*trustee*) of the second part and the said (*obligee*) of the third part And if the above bounden (*obligor*) his heirs executors or administrators and every of them shall in all things observe perform fulfil and keep the covenants clauses provisoes conditions and agreements whatsoever contained in the said indenture which on the part and behalf of him the said (*obligor*) his heirs executors and administrators are and ought to be observed performed and fulfilled according to the true intent and meaning of the same indenture Then &c. Obligation.
Condition.

BONDS FOR PAYMENT OF MONEY.

Obs. 1. Where interest is due upon a bond it has been held that it will be forfeited by a failure in the payment of the interest as well as of the principal, *Van Sandau v. —*, 1 B. & Ald. 214. How forfeited.

2. Where the sum secured is certain, the bond requires, by the 13 & 14 Vict. c. 97, an *ad valorem* stamp on the amount; not exceeding 50*l.*, 1*s.* 3*d.*; not exceeding 100*l.*, 2*s.* 6*d.*; not exceeding 150*l.*, 3*s.* 9*d.*; not exceeding 200*l.*, 5*s.*; not exceeding 250*l.*, 6*s.* 3*d.*; not exceeding 300*l.*, 7*s.* 6*d.*; and exceeding 300*l.* for every 100*l.*, or fractional part of 100*l.*, 2*s.* 6*d.* In the case of a bond for the repayment of a sum to be thereafter lent, where the amount to be secured *shall be limited*, the same duty as a bond for such limited sum; and where the total amount of money secured shall be uncertain and without limit, the same duty as on a bond for an amount equal to the amount of the penalty; and where there shall be no penalty of the bond in Stamp.

for the time being which shall or may at any one time hereafter become due and owing from the said (*principal*) or any person or persons with whom he may hereafter enter into partnership to them the said (*obligees*) or other the person or persons for the time being carrying on the said business as bankers secured to be paid to them the said (*obligees*) their executors administrators and assigns or such person or persons as aforesaid by the joint and several bond of the said (*principal*) and of the said (*sureties*) as his sureties in the penal sum of £

So nevertheless that no greater sum be ultimately recoverable on the said bond and so that the said (*principal*) and (*sureties*) or any or either of them their any or either of their heirs executors or administrators shall not be liable to pay more on account thereof than the sum of £

Now the Condition of the above written bond or obligation is such that if the above bounden (*principal*) and (*sureties*) or any or either of them their or any or either of their heirs executors or administrators shall on demand for that purpose to be made upon or against the said (*principal*) his executors or administrators either personally or by delivery of notice on behalf of the said (*obligees*) or any of them their or any of their executors or administrators or other the person or persons for the time being carrying on the said business of bankers such delivery to be at the dwelling house for the time being or the last known dwelling house of the said (*principal*) his executors or administrators or without any such demand well and truly reimburse and pay unto the said (*obligees*) or any of them their or any of their executors or administrators or other the person or persons for the time being carrying on the said business of bankers all such sum and sums of money as shall or may at any time be due and owing to the said (*obligees*) or any of them their or any of their executors or administrators or other the person or persons for the time being carrying on the said business of bankers for or on account of any such drafts notes or bills of exchange as aforesaid or for money lent and advanced paid or discharged by the said (*obligees*) or any of them their or any of their executors or administrators or other the person or persons for the time being carrying on the said business of bankers for or on the account or for the use of the said (*principal*) his executors or administrators or for him and any person or persons with whom he may hereafter enter into partnership or be concerned in trade or in which he his executors or administrators or other the persons

No.
CCLXXIII.
Running
Account.

Condition.

No.
CCLXXIII.

*Running
Account.*

Indemnity for
paying and dis-
counting bills.

Limitation of
amount to be
secured.

last aforesaid shall by means of an account stated or in any other manner whatsoever become indebted to the said (*obligees*) or any of them or their or any of their executors or administrators or the person or persons for the time being carrying on the said business of bankers *And* shall either on such demand as aforesaid or without any such demand well and truly pay or cause to be paid to the person or persons entitled thereto interest for such sum and sums of money as aforesaid after the rate of £ for every £100 by the year to be computed from the time or respective times of advancing paying or disbursing the same respectively or of the same becoming due *And also* the lawful and usual commission charges and expenses incident or occasioned by the transactions aforesaid or any of them whether such payments advancements or disbursements shall be by cash notes drafts bills of exchange or otherwise howsoever or in whatever manner or on whatever account the said debts shall become due *And also* if the said (*obligors*) or any or either of them their or any or either of their heirs executors or administrators shall from time to time and at all times hereafter save defend keep harmless and indemnified the said (*obligees*) and every of them their and every of their executors and administrators or other the person or persons for the time being carrying on the said business of bankers and their and every of their estates and effects real and personal of from and against all sums of money losses costs charges and expenses which they or any of them shall or may pay bear sustain or be put unto for or by reason or on account of any sums of money advanced by them or any drafts or bills of exchange to be paid or discounted for the said (*principal*) or for him and any person or persons with whom he may hereafter enter into partnership or be concerned in trade Then the above written bond or obligation shall be void and of no effect but otherwise shall remain in full force *Provided always* that the said (*principal*) and (*sureties*) or either of them their or either of their heirs executors or administrators shall not be liable to pay by virtue of this bond any greater sum than the said sum of £ but that this bond shall be a continuing security to that amount for the sums from time to time owing as aforesaid.



No. CCLXXIV.

*Bond for the Payment of a Sum of Money by Instalments.*No.
CCLXXIV.By Instalments.

Know all &c. Now &c. That if the above bounden (*obligor*) his heirs &c. shall pay or cause to be paid unto the above named (*obligee*) his executors &c. the full sum of £900 with interest for the same after the rate of 5*l.* for every 100*l.* for a year to be computed from the date of the above written obligation on the days and times following (that is to say) the sum of £300 part thereof with interest on the whole of the said sum of £900 on the day of next ensuing the date of the above written obligation and which will be in the year of our Lord 18 the sum of £300 other part thereof with interest on the sum of £600 on the day of then next following and the sum of £300 the residue thereof with interest for the same sum on the day of then next ensuing which will be in the year of &c. Then this obligation shall be void but if default shall be made in payment of any or either of the said several and respective sums of money with the interest thereof respectively or of any part thereof respectively on any of the said days and times above mentioned for the payment thereof according to the true intent and meaning of these presents Then this obligation is to remain in full force and virtue.

No. CCLXXV.

Bond to secure the Payment of future Advances.

No. CCLXXV.

*Running
Account.*

Know all &c. Now &c. That if the above bounden (*obligors*) or either of them his heirs executors or administrators do and shall on demand in writing or within calendar months after demand (*a*) well and truly pay or cause &c. (*b*) unto the said (*obligee*) such sum and sums of money [not exceeding in the whole the sum of £] as at the time of such demand shall be due from the said (*obligors*) or the survivor of them his

(*a*) If there be partners, say, "for that purpose to be made by the partner or partners for the time being carrying on the business of A. B. & Co. under the present or any future partnership well &c." as above.

(*b*) Or, when there are partners, "unto the said (*obligers*) or the partner or partners for the time being."

No. CCLXXV. *Running Account.* executors or administrators to the said (*obligee*) (a) his executors &c. on or as part of the balance of an account between them either for principal money or interest money lent advanced and paid bills discounted or accepted commissions or on any other account whatsoever free and clear from all deductions &c. being the same money as is or is intended to be secured by an indenture bearing even date with these presents and made between the said (*obligor*) of the one part and the said (*obligee*) of the other part Then &c.



No.
CCLXXVI.

*Money left in
Trade.*

Obligation.

Recital of debt
from one partner
to another.

No. CCLXXVI.

Bond for the Payment of Money left in Trade.

Know all &c. Whereas the above bounden (*obligor*) was on the day of now last past and is still indebted unto the above named (*obligee*) in the sum of £ for money book debts and other effects belonging to the said (*obligee*) as his part or share of the effects which he lately held in partnership with the said (*obligor*) *And* it was agreed that the said sum of £ should be left in the hands of the said (*obligor*) till the expiration of years from the day of now last past or till the decease of the said (*obligor*) which shall first happen provided the said (*obligor*) should elect or think proper to continue the said sum in his hands *And* that interest at the rate of by the year and in that proportion for any less time than a year shall be paid to the said (*obligee*) his executors and administrators for the said sum of £ at the times and in manner hereinafter mentioned *Now &c.* That if the said (*obligor*) his heirs executors or administrators shall pay or cause to be paid unto the said (*obligee*) his executors administrators or assigns the sum of £ on the day of 18 or the day of the decease of the said (*obligee*) whichever shall first happen *And* if in the meantime and until payment of the said sum of £ the said (*obligor*) his heirs executors and administrators shall pay or cause &c. unto the said (*obligee*) his executors &c. interest for the said sum of £ at the rate of per cent. per annum half yearly upon the day of

Condition.

(a) Or, where there are partners, "to the said (*obligees*) or the partner or partners for the time being in the said house or his or their executors &c."

and the day of in every year the first pay-
 ment to be made on the day of next ensuing pro-
 vided the said sum of £ shall not be paid in the meantime
And in case the said sum of £ shall be paid between or
 in the interval of the said days of payment then also shall make
 payment of a proportional part of the said interest for any less
 time than for half a year at the same time and together with
 and in addition to the said principal sum of £ Then &c.

No.
 CCLXXVI.
*Money left in
 Trade.*

POST-OBIT BONDS.

- | | | |
|---------------------------------------|--|-----------------------|
| 1. <i>Definition.</i> | | 3. <i>Stamp Duty.</i> |
| 2. <i>Statutory Provisions as to.</i> | | |

SECT. 1. A post-obit bond is a security for the payment of a greater sum than the sum advanced, where either the payment depends upon a contingency, or, the payment being certain, the time of payment depends upon a contingency. This is a security of a questionable nature, the validity of which has often been disputed with success in a court of equity, where inadequacy of price is deemed to be a sufficient ground for affording relief against such bonds, *Gowland v. De Faria*, 17 Ves. 20.

2. As a post-obit bond is a bond for a sum certain, or at a time that may be rendered certain, and is therefore a matter of computation, it is held that it does not come within the stat. 8 & 9 Will. 3, c. 11, s. 8; but within the stat. 4 & 5 Ann. c. 16, s. 12; *Wardell v. Fermor*, 2 Campb. 285 n; *Cardozo v. Hardy*, 2 Moore, 220; *Murray v. Earl of Stair*, 2 B. & C. 82.

3. As to the stamp on the payment of a sum certain, see *ante*, Stamp duty. *Obs. 3, Bond for Payment of Money.*

No. CCLXXVII.

No.
 CCLXXVII.
Post-Obit.

Common Form of a Post-Obit Bond.

Know all &c. Whereas the above named (*obligee*) hath contracted and agreed with the above bounden (*obligor*) for the purchase of the sum of £ to be paid to her the said

Obligation.
 Recital of con-
 tract for pur-
 chase.

No. CCLXXVII. <i>Post-Obit.</i>	(obligee) her executors administrators or assigns in the event of A. B. departing this life in the lifetime of the said (obligor) but not otherwise at or for the price or sum of £ And
Payment of consideration.	whereas in performance of the said recited contract she the said (obligee) hath paid the said sum of £ of lawful &c. unto the said (obligor) at or before the sealing and delivery of the above written obligation the receipt and payment whereof accordingly the said (obligor) doth hereby acknowledge And whereas upon the treaty for the purchase of the said contingent sum of £
Agreement to give bond.	it was agreed that the payment thereof should be secured by among other securities the bond of the said (obligor) with the
Condition.	condition &c. Now &c. That if the said A. B. should depart this life in the lifetime of the said (obligor) Then and in such case if the said (obligor) his heirs executors or administrators shall pay or cause to be paid unto the said (obligee) her &c. within calendar months next after the decease of the said A. B. as aforesaid the sum of of &c. Or in case the said (obligor) shall happen to depart this life in the lifetime of the said A. B. Then &c.



No.
CCLXXVIII.
*Quiet
Enjoyment.*

No. CCLXXVIII.

Bond from a Vendor of an Estate for quiet Enjoyment, free from all Incumbrances, the Estate being subject to the Payment of Portions under a Marriage Settlement.

Obligation.	<i>Know all &c. Whereas</i> the above named (obligee) hath con-
Recital of contract for purchase.	tracted with the above bounden (obligor) for the absolute purchase of all &c. and the inheritance thereof in fee simple exonerated and discharged from all incumbrances whatsoever for the
Recitals of defects in title.	price or sum of And whereas upon investigating the title of the said (V.) to the said hereditaments it hath been discovered that the same are subject to the payment of certain sums of money for the portions of the younger sons and daughters of the said (V.) and M. his wife by virtue of certain indentures of &c. And whereas the said (V.) and M. his wife have one younger son named (T.) who is an infant under the age of twenty-one years and is therefore incompetent to release the said purchased premises and it is possible that there may be other issue hereafter born of the said (V.) and M. his wife [<i>recite conveyance to purchaser, his heirs and assigns</i>] And whereas upon the treaty for the said purchase in consideration of the premises

it was agreed that the said (V.) should guarantee and secure to the said (P.) his heirs and assigns the quiet and peaceable enjoyment of the said purchased hereditaments against all persons whomsoever as hereinafter is expressed *Now &c.* That if the said (P.) his heirs and assigns shall from time to time and at all times hereafter peaceably and quietly have hold and enjoy all and every the said lands and hereditaments conveyed and assured by the said recited indenture of even date with the above written obligation or intended so to be and receive and take the rents issues and profits thereof and of every part thereof without the let suit trouble eviction interruption claim or demand whatsoever of from or by any person or persons whomsoever (a) *And also* if the said (V.) his heirs executors or administrators shall and do from time to time and at all times hereafter well and effectually save defend keep harmless and indemnified the said (P.) his heirs and assigns and the hereditaments so conveyed to him as aforesaid and every part thereof as well from and against the portions of the said (son) and other the younger children or child of the said (V.) and M. his wife if any there should be and from and against all former and other gifts grants bargains sales mortgages leases jointures dower right and title of or to dower estates titles charges and incumbrances whatsoever which now have been or which at any time hereafter may be made done executed committed suffered or created by the said (V.) or any other person or persons whomsoever (a) *Then &c.*

No.
CCLXXVIII.

*Quiet
Enjoyment.*

Agreement to
enter into a
bond.
Condition.

No. CCLXXIX.

Condition of Bond of Indemnity against Portions.

Obs. It will be observed that the last precedent is for quiet enjoyment against all persons and against all incumbrances. The following form is applicable where an estate was limited to trustees for a term of years for raising portions for younger children, and from whom a release could not be obtained on the sale of part of the estate. The condition is restricted to the particular claims in question, which, under ordinary circumstances, is as extensive a guarantee as the purchaser can reasonably require.

Know all &c. [insert the necessary introductory recitals of facts] *Now the Condition of the* above written obligation is such that if the above bounden (*obligors*) or either of them their or either of their heirs executors or administrators do and shall from time

No.
CCLXXIX.

*Against
Portions.*

Condition to
indemnify
against portions.

(a) See *Obs.* before next precedent.

No.
CCLXXIX.
*Against
Portions.*

to time and at all times hereafter until the said purchased premises shall be properly and legally discharged from the said term of 500 years and the trusts thereof and until such discharge legally executed shall be delivered to the said (*P.*) his heirs or assigns well and sufficiently save keep harmless and indemnified the said (*P.*) his heirs and assigns and the said hereditaments and premises so purchased by the said (*P.*) as aforesaid comprised in the same term of from and against all claims and demands whatsoever of or by all and every or any the younger children and child of the said (*settlor*) and

Quiet enjoyment.

his wife and the respective executors administrators and assigns of such younger children or child or any other person or persons claiming or to claim any estate or interest from or under or in trust for them or any or either of them of in or to the said premises or the rents issues or profits thereof for or in respect of any portion or portions or any share or shares thereof which can shall or may be raised or raiseable under or by virtue of the trusts of the said term of 500 years or otherwise for or in respect thereof *And also* of from and against all costs charges damages and expenses which he the said (*P.*) his heirs and assigns shall or may at any time hereafter pay sustain or be put unto for or by reason thereof *And also* if the said (*P.*) his heirs and assigns shall and may from time to time and at all times hereafter have hold and quietly possess and enjoy all and every the said hereditaments and premises so purchased by him and conveyed or intended so to be as aforesaid and receive and take the rents and profits thereof and of every part thereof without any interruption denial let suit eviction claim and demand whatsoever of or by any person or persons whomsoever claiming or to claim any estate right title or interest therein by from or under the aforesaid term of 500 years or the trusts thereof or any uses trusts powers or limitations contained in the said recited settlement affecting the said premises or otherwise in respect thereof Then &c.

No. CCLXXX.

No. CCLXXX.
Leaseholds.

Bond of Indemnity on the Sale of Part of the Premises held under a Lease against the Rent reserved in the Lease, and for quiet Enjoyment of other Premises, in consequence of a Defect in the Title.

Obligation.
Recital of
leases.

Know all &c. Whereas [recite two leases of different dates granted to obligor] And whereas [recite defect in the title of the

second lease] *And whereas* [recite assignment of the leasehold premises from obligor to obligee] *And whereas* upon the treaty for the sale and the assignment expressed to be made in or by the said in part recited indenture bearing even date with the above written obligation it was agreed that the said (*obligor*) should enter into the said bond subject to the condition hereinafter contained for making the same void *Now &c.* That if the said (*obligor*) his heirs executors or administrators shall from time to time and at all times hereafter well and effectually save defend keep harmless and indemnified such of the said premises as are comprised in the lease bearing date the as are expressed to be assigned by the said indenture of assignment bearing even date herewith and the said (*obligee*) his heirs executors administrators and assigns and every of them of from and against the said yearly rent of £ reserved in the said in part recited indenture of &c. and of from and against all actions &c. *And also* if the said (*obligee*) his executors &c. shall and may at all times during the residue of the said term demised by the said indenture of lease bearing date &c. peaceably &c. have &c. such of the premises comprised in the said indenture &c. without the let suit trouble interruption or disturbance of from or by the said A. B. &c. but subject to the covenants and agreements contained in the said indenture of lease bearing date the &c. [*the first lease*] so far as the same are applicable to such of the premises as are comprised in the said indenture of assignment as are expressed to be thereby assigned discharged of the said yearly rent *Then &c.*

No. CCLXXX.

Leaseholds.

Agreement to enter into bond.

Condition.

No. CCLXXXI.

Bond to Repair a Road.

Know all &c. *Whereas* the above bounden (*Obligors*) have contracted and agreed with the said (*Trustees*) above named at their own costs and charges well and sufficiently to repair and amend from time to time and at all times when and where needful a certain road commonly called beginning at and extending from to comprising a distance of yards more or less *And also* all and singular the drains ditches aqueducts and conduits adjoining to or under the said road for and during the term of years commencing from the

No.
CCLXXXI.*Repairing a Road.*

Obligation.

Recital of contract.

No.
CCLXXXI.
*Repairing a
Road.*

day of next ensuing the date of the above written obligation the said (O.) being paid yearly by the said (T.) during the said term after the rate of £ per mile by equal half-yearly payments in every year during the said term the first payment thereof to commence and be made on the day of next ensuing the date of the above written obligation

And the said (O.) have also agreed with the said (T.) to find and provide sufficient materials and tools at their own expense at all times during the said term for the purpose of repairing and keeping in repair such part of the road as aforesaid *And* all the drains ditches and conduits thereof made or to be made to leave in good and sufficient repair and condition at the end of the said term but if the said (O.) or the said (T.) or any two or more of them should be dissatisfied with the said contract and should give to each other three months' notice in writing of their intention to give up or vacate the contract that then it shall and may be lawful to and for the said parties respectively giving such notice in the first or second year to vacate or make void the said contract at the expiration of such notice respectively and the same shall be vacated and made void accordingly

Condition.

Now the Condition therefore of the above written obligation is such That if the above bounden (O.) or any of them their or any of their heirs executors administrators or assigns shall at their own proper costs charges and expenses from time to time and at all times when and where needful during the said term of years well and sufficiently uphold maintain repair support cleanse and keep the said part of the said road hereinbefore described and every part thereof and all and singular the drains ditches and conduits adjoining or belonging to or under the same with all and all manner of needful repairs amendments and works whatsoever *And also* shall at their own expense provide sufficient materials and tools for the purposes aforesaid to the satisfaction of the (T.) or such person or persons as they shall appoint according to the true intent and meaning of the said contract and of these presents *And* if at the end or other sooner determination of the said term of years the said (O.) shall leave the same part of the said road and premises aforesaid well and sufficiently repaired and amended Then &c.



No. CCLXXXII.

No.
CCLXXXII.
To Replace
Stock.

Condition in Bond for replacing Stock.

Obs. An *ad valorem* stamp, reckoned on the value of the stock on Stamp duty.
the day of the date of the bond, or either of the ten days preceeding.

Now &c. That if the above bounden (*obligors*) or either of Condition.
them their or either of their heirs executors or administrators
shall on or before the day of next ensuing duly
purchase and transfer or cause to be purchased and transferred
the sum of £ 3 per cent. &c. in the books of the Governor
and Company of the Bank of England to or in the name or
names of the said (*obligee*) his executors administrators or as-
signs and do and shall in the mean time and from time to time
well and truly pay or cause to be paid to the said (*obligee*) his
executors administrators or assigns such and the same sum and
sums of money as the dividends of the said sum of £ 3 per
cent. &c. would amount to if the same had not been sold out
but had remained in his name and at such and the same several
days and times as the same dividends would in that case have
become payable without any deduction whatsoever [except in-
come tax] Then &c.

No. CCLXXXIII.

No.
CCLXXXIII.
To Resign
Office.

Bond of Resignation as Master of a Free-school, in case of
Negligence, &c.

Know all &c. Whereas the court of assistants of the above Obligation.
named company in pursuance of the trust in them reposed did Recital of
on &c. elect and choose the above bounden (*Obligor*) to be chief election.
schoolmaster at in the county of founded and en-
dowed by &c. deceased during his diligent and faithful discharge
of his duty in such behalf *Now &c.* That if the said (*O.*) from Condition.
time to time and at all times hereafter during his continuance
in the said place or office of schoolmaster shall observe and
keep all rules and orders already made or to be made by the
said company for the better regulation of the said school and
scholars *And* shall diligently and carefully perform his duty
and office in the said place of chief schoolmaster of the said
school in all respects for the benefit and credit of the said school

No.
CCLXXXIII.
*To Resign
Office.*

according to the trust in him reposed by the said company
And shall within months after notice to him given or
left in writing for him at the said school under the hands of the
master and wardens of the said company or any three of them
peaceably and quietly leave surrender and resign his said place
of chief schoolmaster together with the possession of the said
school and school house with the appurtenances Then &c.

No.
CCLXXXIV.
*To Resign
Living.*

No. CCLXXXIV.

*Bond to reside upon a Parsonage, and to resign in Favour of
the Patron.*

Obs. Formerly, general as well as special bonds of resignation
were held good at law, and a court of equity would interfere only
when a bad use was attempted to be made of such bonds; but in the
well-known case of the *Bishop of London v. Ffytche*, the House of
Lords held that a presentation after a general bond of resignation was
illegal, and consequently that a bishop could not be compelled, under
such circumstances, to induct the person presented to him, 2 B. P. C.
211. Since that decision, special bonds of resignation have been held
good, *Lord Sondes v. Fletcher*, 5 B. & A. 835; *Fletcher v. Lord
Sondes*, 1 Bligh, N. S. 144; and by the 9 Geo. 4, c. 94, they are
now, in confirmation of the common law, made valid in specified
cases. See Tudor's L. C. on Real Prop. pp. 163—165.

Obligation.
Recital that
church is
vacant.

Know all &c. Whereas the rectory of the church of in
the county of and diocese of is now vacant by the death
of I. II. clerk the last incumbent therein And the above named
(*obligee*) being the patroness of the said rectory and church is about
by writing under her hand and seal to present the above bounden
(*obligor*) to the bishop of the said diocese To the end that he
the said (*obligor*) may be admitted instituted and inducted into
the said rectory and church of aforesaid *And whereas*
the above bounden (*obligor*) hath agreed to be personally resi-
dent in the said parish of so long as he shall continue
rector or incumbent there without procuring or accepting any
qualification or licence from any person or persons for dispens-
ing with his the said (*obligor's*) residence in or upon the said
parsonage *And whereas* the said (*obligee*) hath two sons who
are now infants but probably one of the said sons may be desi-
rous of taking holy orders and of being presented to the said

Agreement to
reside.

To resign in
favour of pa-
tron's son.

rectory and the said (*obligor*) hath agreed in that event to resign the said rectory or living upon the request of the said (*obligee*) or the owner of the said rectory for the time being in order that any son so taking holy orders may be presented thereunto *Now* &c. That if the said (*obligor*) shall procure himself to be legally admitted instituted and inducted into the said rectory as aforesaid *And* shall afterwards continue to reside in and upon the said parsonage of &c. for so long time as he shall be rector there without procuring or accepting any qualification or licence from any person or persons whomsoever whereby to dispense with the said (*obligor's*) residence in or upon the said parsonage *And also* if either of the said sons of the said (*obligee*) shall take orders and the said (*obligee*) or the owner of the said rectory for the time being shall present such son of the said (*obligee*) to the said rectory and if the said (*obligor*) within calendar months after request made to him for that purpose shall resign the said living to the bishop of the diocese for the time being and cause such resignation to be accepted so that the said rectory may become vacant *And also* within the same month give notice of such resignation to the said (*obligee*) her executors administrators or assignus Then &c.

No.
CCLXXXIV.
*To Resign
Living.*

Condition.

CERTIFICATES.

Certificates of Acknowledgment of Deeds by Married Women,
see post, DISENTAILING DEEDS.

No. CCLXXXV.

*A Certificate by the Mayor of a Corporation of the due
Execution of a Deed.*

No.
CCLXXXV.
*Execution of a
Deed.*

City of } I A. B. mayor of the city of aforesaid do
} hereby certify to all persons whom it may concern
That C. D. of in the county of did on the day of the
date hereof sign and seal and as his voluntary act and deed deliver

No.
CCLXXXV.
*Execution of a
Deed.*

unto E. F. of &c. aforesaid one deed indented bearing even date with these presents made or expressed to be made between the said C. D. of the one part and the said E. F. of the other part and that he did execute the same in my presence and in the presence of the witnesses whose names are indorsed on the back of the said indenture and which said indenture is annexed to this present certificate *In testimony* of the truth hereof I the said A. B. have hereunto put my hand and affixed the seal of the said city and corporation this day of &c.

A. B. Mayor.

No.
CCLXXXVI.
*Of Mortgage
being paid off.*

No. CCLXXXVI.

A Certificate of a Mortgage being paid off.

Obs. A certificate of this kind, which is required by the Registry Acts, must be on unstamped parchment, and signed (not sealed) by the mortgagor and mortgagee in the presence of two witnesses, who must prove upon oath, before the registrar or his deputy, the signing of the same. And if the witnesses are not present at the payment of the money, the mortgagor and mortgagee must acknowledge it to be satisfied. The certificate is then to be filed by the registrar, to remain on record. In the act relating to Middlesex, the certificate is confined to mortgages only, and does not extend, as in the other acts, to judgments and recognizances.

To the Registrar of Riding in the county of York or his
lawful Deputy.

We the said I. H. of &c. and D. W. of &c. respectively mortgagor and mortgagee in a certain indenture of mortgage bearing date the day of and made between the said I. H. of the one part and the said D. W. of the other part (a memorial whereof was registered in the said office the day of near twelve at noon in book marked or called page and number) *Do* hereby certify to the said registrar or his deputy that all monies due owing and secured in the said indenture are fully paid and satisfied in discharge thereof And we do hereby request that an entry may be made of such payment and satisfaction in the margin of the said register book opposite to the entry of the said memorial as the act of

parliament in that case directs As witness our hands this
day of

I. H.
D. W.

No.
CCLXXXVI.
*Of Mortgage
being paid off.*

Witnesses to the signing hereof G. L.
H. B.

No. CCLXXXVII.

No.
CCLXXXVII.
*Service of
Clerkship.*

*Certificate of an Articled Clerk having regularly served his
Clerkship.*

*And I do hereby certify that the said A. B. has duly and
faithfully served under his articles of clerkship [or "assignment,"
as the case may be] bearing date &c. for the term therein ex-
pressed and that he is a fit and proper person to be admitted an
attorney.*

COMPOSITION.

- | | |
|---|--|
| <p>1. <i>Modes of Arrangement between a
Debtor and his Creditors.
Deed of Inspection.
Deed of Composition.
Letter of Licence.
Assignment of Debtor's Estate.</i></p> <p>2. <i>Assignment for a Composition by
Deed or Parol.</i></p> <p>3. <i>Assent of the Creditor expressed
or implied.</i></p> <p>4. <i>Terms of the Contract to be strictly
complied with by Debtor.</i></p> <p>5. <i>When Securities can be retained.</i></p> | <p>6. <i>Composition Contracts must be
fair.</i></p> <p>7. <i>Covenant not to sue.</i></p> <p>8. <i>Release.</i></p> <p>9. <i>Assignment of a Person's Pro-
perty in Trust, when valid.</i></p> <p>10. <i>No Preference in Payments un-
der a Trust Deed.</i></p> <p>11. <i>When Assignment for benefit of
Creditors is revocable.</i></p> <p>12. <i>Arrangements by Deed under the
Bankrupt Law Consolidation
Act, 1849.</i></p> <p>13. <i>Stamp on a Composition Deed.</i></p> |
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SECT. 1. Creditors may enter into any arrangements with a debtor which may best suit the convenience of the parties; and the courts will construe all composition contracts so as to give full effect to them. The mode of effecting such an arrangement must depend upon the circumstances of the case. When a debtor wishes only for time, a

Modes of ar-
rangement be-
tween a debtor
and his cre-
ditors.

<i>Composition.</i>	simple agreement to that effect may be sufficient ; but the more usual
Deed of inspection.	mode in this case is to execute a deed called a <i>Deed of Inspection</i> , by which a debtor is enabled to carry on his business for the benefit
Deed of composition.	of the creditors under the inspection of trustees. Another mode of effecting an arrangement is by the creditors agreeing to accept a composition, or a part of their respective debts, in satisfaction of the whole ; and the instrument by which this is effected is called a <i>Deed of Composition</i> ; frequently a memorandum of an agreement to accept a composition is drawn up at the meeting of the creditors, as a preliminary to a more formal deed. In both these deeds, it is usual to insert a covenant, called a <i>Letter of Licence</i> , whereby the creditors agree to give the debtor, for a certain time, liberty to pursue his affairs without the danger of being arrested or sued. Sometimes this covenant is given by a separate instrument. The last and most frequent mode of effecting such an arrangement, is by the debtor conveying or assigning his estate to trustees, for the benefit of the creditors, which may be done by one or by separate instruments, according to the nature of the transaction. Sometimes debtors who are not traders voluntarily adopt this mode of paying their debts, in which case the creditors are usually not parties.
Letter of licence.	
Assignment of debtor's estate.	
Assignment for a composition by deed or parol.	2. Every agreement between a debtor and his creditors ought to be by deed ; and if the instrument is to operate as a release or discharge at law of a specialty debt, it cannot be otherwise, <i>Lowe v. Eginton</i> , 7 Price, 604 ; 6 Petersd. Abridg. 2. At law, an agreement not under seal to accept a less sum in satisfaction of a greater sum which is due, is not binding, Co. Litt. 212 b. ; <i>Pinnel's Case</i> , 5 Co. 117 ; see Smith's L. C., pp. 245—255, 4th ed. ; although followed by acceptance of payments, <i>Heathcote v. Crookshanks</i> , 2 T. R. 24 ; <i>Fitch v. Sutton</i> , 5 East, 230 ; unless there be some new and sufficient consideration in favour of the creditor, <i>Steinman v. Magnus</i> , 11 East, 390 ; <i>Sibree v. Tripp</i> , 15 M. & W. 23 ; <i>Haigh v. Brooks</i> , 10 Ad. & Ell. 309 ; <i>Curlewis v. Clark</i> , 3 Exch. 377. See Forsyth on Deeds of Composition, pp. 20—35, 3rd ed.

A composition agreement by several creditors, although by parol, so as to be incapable of operating as a release, and although unexecuted so as not to amount in strictness to a satisfaction, will be a good answer to an action by a creditor for his original debt if he accepted the new agreement in satisfaction thereof, because for such an agreement there is a good consideration to each creditor, viz., the undertaking of the other unopposing creditors to give up a part of their claim. But no such agreement can operate as a defence if made merely between the debtor and a single creditor, the other creditors or some of them must also join in the agreement with the debtor and with each other, for otherwise it would be a bare contract to accept a less sum in satisfaction of a greater, which would be invalid by reason of want of

consideration for relinquishing the residue, *Boyd v. Hind*, 1 H. & N. 947; per *Williams, J.* See *Good v. Chesman*, 2 B. & Ald. 328; *Lyth v. Ault*, 7 Exch. 669.

Composition.

Whenever the demand is for unliquidated damages, the payment of a less sum may be a satisfaction of a greater, *Wilkinson v. Byres*, 1 Ad. & Ell. 113. And a smaller sum may be taken in satisfaction of a larger one *which is not yet due*, *Tinkler v. Hilder*, 4 Exch. 190; or where the security of a third party is taken, *Gillett v. Whitmarsh*, 8 Q. B. 966; or where the debtor himself gives a negotiable security for a smaller sum, *Sibree v. Tripp*, 15 M. & W. 23.

3. The assent of a creditor to a composition contract is necessary to make it binding on him; but this assent may be either expressed or implied, *Butler v. Rhodes*, 1 Esp. 236; and a verbal promise to accept a composition and execute the deed will prevent the creditor from suing for the original cause of action, *Bradley v. Gregory*, 2 Campb. 383; *Reay v. White*, 1 C. & M. 748. So in equity, creditors are in general as much bound by acting under a deed of composition as if they had signed the deed, *Ex parte Sadler*, 15 Ves. 52; but a creditor is not bound by a composition deed to which he is a party, if he have been induced to sign it by any misrepresentation made to him, *Cooling v. Noyes*, 6 T. R. 263; *Wenham v. Fowle*, 3 Dowl. P. C. 43.

Assent of the creditor, expressed or implied.

4. If the terms of the composition are not strictly complied with by the debtor, the creditor is released from his obligation, *Cranley v. Hillary*, 2 M. & S. 120; *Oughton v. Trotter*, 2 Nev. & M. 71; and a court of equity will not relieve the debtor, if he do not strictly perform the agreement, 1 Eq. Ab. 28; *Rose v. Rose*, Ambl. 332; *Mackenzie v. Mackenzie*, 16 Ves. 372. So where the creditors had agreed to take a composition, and after the first payment the debtor became a bankrupt, it was held that the creditors were entitled to prove under the commission for the residue, *Ex parte Bennet*, 2 Atk. 528; *Ex parte Vere re Palmer*, 1 Rose, 281; *Ex parte Peel*, Ib. 434.

Terms of the contract to be strictly complied with by debtor.

5. If the composition deed contain no stipulation respecting securities, a creditor may retain them, provided he deduct the sum to be recovered upon the security, and take a composition for no more than what remains due, *Thomas v. Courtney*, 1 B. & Ald. 1. But where a creditor having received the full amount of his composition, and given the debtor his release, recovered sums on bills formerly given as a security, such sums have been considered as money received to the debtor's use, *Stock v. Manson*, 1 B. & P. 286. So where a creditor, after having executed a deed of composition, refused to set the amount of his debt to his name, upon the ground of his having a security, he was held to have bound himself to the extent of his then existing debt, and that he could not recover upon the security, *Hurrey v. Wall*, 1 B. & Ald. 103; *S. C.* 2 Stark. 195; *Holmer v. Viner*,

When securities can be retained.

Composition.

1 Esp. 131. As to filling up a blank in a deed after execution, see *post*, DEEDS; *Hudson v. Revett*, 5 Bing. 368; *Fazakerly v. M^r Knight*, 6 Ell. & Bl. 795.

Composition contracts must be fair.

6. A fair and equal composition contract, without fraud or contrivance, will be established both at law and in equity; but any secret agreement between a debtor and a creditor, to secure to the latter payment of a sum beyond that secured to the others, is not only voidable but absolutely void at law, *Cockshott v. Bennett*, 2 T. R. 763; *Jackson v. Lomas*, 4 T. R. 166; *Feize v. Randall*, 1 Esp. 224; *Lewis v. Jones*, 4 B. & C. 511; *Higgins v. Pitt*, 4 Exch. 312. Courts of equity will not enforce any agreements securing to some creditors who had executed a deed of composition a greater advantage than the other creditors would have under the deed, and without their knowledge, *Child v. Danbridge*, 2 Vern. 72; *Middleton v. Onslow*, 1 P. Wms. 708; *Mawson v. Stock*, 6 Ves. 300; *Cecil v. Plaistow*, 1 Anst. 202; *Fawcett v. Gee*, 3 Anst. 910.

A composition deed contained a release of the debtor subject to a proviso, making the release void on non-payment of any of the instalments covenanted to be paid by the deed; it was held, that as against a creditor who had acceded to the deed, but by means of a second arrangement had received more than the amount of the whole composition, the release was absolute, although the instalments had not been paid according to the covenant, *Ex parte Oliver re Hodgson*, 4 De G. & Sm. 354; see *Alsager v. Spalding*, 4 Bing. N. S. 407. A debtor may recover back money which he has been compelled to pay in consequence of any private bargain with a creditor, *Smith v. Cuff*, 6 M. & S. 160; yet any advantage which a creditor may obtain, not in fraud of the other creditors, has been held to be good, *Feize v. Randall*, 6 T. R. 146; and a preference may be rendered valid in equity by the agreement being notified to the other creditors and sureties, *Jackman v. Mitchell*, 13 Ves. 586; *Lee v. Lockhart*, 3 My. & Cr. 302. By the 12 & 13 Vict. c. 106, s. 230, it is provided, that where, at two successive meetings of creditors, after due notice given, nine-tenths in number and value of those present agree to accept a composition, the court may annul the adjudication of bankruptcy. The mode of voting in deciding upon the composition is prescribed by the 231st section of the same act. In order to render a composition under those sections binding on all the creditors of the bankrupt, the offer of composition must be made to all the creditors, and not confined to nine-tenths in number and value of the creditors who have signed the composition agreement, *Taylor v. Pearse*, 2 H. & N. 36; 3 Jur., N. S. 917; 26 L. J., Exch. 371.

Covenant not to sue.

7. A covenant not to sue the debtor at all is a release, and the covenant may be pleaded in bar of an action; but a covenant not to sue within a given time is not a release, but a covenant, and remedy

may be had on the covenant, *Curvil v. Edwards*, 1 Show. 330; *Lacy v. Kinaston*, 1 Id. Raym. 690; *S. C.* Holt's Rep. 178; *S. C.* 1 Salk. 575; *Dean v. Newhall*, 8 T. R. 168; *Ford v. Beech*, 11 Q. B. 852; *Webb v. Spicer*, 13 Q. B. 898. Composition.

8. A release of partnership debts executed by one partner concludes the firm, contrary to the general rule, that one partner cannot bind another by deed, *Arton v. Booth*, 4 B. Moore, 192; *Hawkshaw v. Parkins*, 2 Swanst. 539; Coll. on Part. p. 311, 2nd ed. If a release is to be given to only one out of two or more joint debtors, it must be expressly so stated, otherwise it will operate as a discharge to both, *Solly v. Forbes*, 2 Brod. & Bing. 38; see Coll. on Part. p. 429, 2nd ed. Although a release to one partner is generally a release to all, yet a covenant not to sue one of several partners will not operate as a release to the others, because the use of such an instrument evidences an intention on the part of the covenantor to avoid the legal effects of a release to co-partners, *Hutton v. Eyre*, 1 Marsh. 603; Coll. on Part. p. 431, 2nd ed. Release.

9. An assignment by a person not a trader, or not subject to the bankrupt laws, of all his property for the benefit of creditors, is valid, although a preference be given to some creditors above others, *Estwick v. Caillaud*, 5 T. R. 424; and it be made to defeat a creditor of his execution, *Pickstock v. Lyster*, 3 M. & S. 371; *Estwick v. Caillaud*, 5 T. R. 420; *Wood v. Dixie*, 7 Q. B. 892; *Harland v. Binks*, 15 Q. B. 713. Assignment of a person's property in trust, when valid.

An assignment of all a trader's effects, *bonâ fide* executed to a trustee for the general benefit of all his creditors, is not void either at common law or under the 13 Eliz. c. 5, although it contains a clause empowering a trustee to employ the grantor or any other person or persons in winding up the affairs of the grantor, and in collecting and getting in his estate and effects thereby assigned, and in carrying on his trade if thought expedient by him; if it appears from the whole scope of the deed that the carrying on of the trade was merely subsidiary to the general purpose of sale and distribution, *Janes v. Whitbread*, 11 C. B. 406; *Coates v. Williams*, 7 Exch. 205. But care must be taken not to create a trading partnership between the creditors who sign the deed, by enabling them to carry on the debtor's business generally by making profits out of it for the purpose of paying themselves, for such a deed is void as to the creditors who do not execute it, and the parties executing will be liable for debts contracted by the trustees in carrying on the business, *Owen v. Body*, 5 Ad. & Ell. 28; *Hickman v. Cox*, 18 C. B. 617; 27 L. J., C. P., Exch. Ch. 129. In the latter case the judges were equally divided in opinion, see *In re Stanton Iron Company*, 2 Jur., N. S. 130; 25 L. J., Ch. 142.

If any trader shall execute any conveyance or assignment by deed of all his estate and effects to a trustee or trustees for the benefit of Conveyance of all a trader's property not an

Composition.
act of bankruptcy, unless a petition for adjudication be filed within three months.

all the creditors of such trader, the execution of such deed shall not be deemed an act of bankruptcy, unless a petition for adjudication of bankruptcy be filed within three months from the execution thereof, provided such deed shall be executed by every such trustee within fifteen days after the execution thereof by the trader, and the execution by the trader and by every such trustee be attested by an attorney or solicitor, and notice thereof be given within one month after the execution thereof by such trader, in case such trader reside in London or within forty miles thereof, in the London Gazette, and also in two London daily newspapers; and in case such trader does not reside within forty miles of London then in the London Gazette and in one London daily newspaper, and one provincial newspaper published near to such trader's residence, and such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee and attorney or solicitor, 12 & 13 Vict. c. 106, s. 68.

Trustees under composition deeds.

In consequence of the provisions of the acts 12 & 13 Vict. c. 106, ss. 67, 68, as to bankrupts, and the 1 & 2 Vict. c. 110, s. 59, as to insolvent debtors, trustees are exposed to great hazard during three months after a composition deed has been executed, on account of its liability to be rendered void by those statutes.

Where the whole interest in a lease is vested in trustees for the benefit of creditors, they may become liable to the rents and covenants in the lease, *Hyde v. Watts*, 12 M. & W. 254. As to the liability of trustees under composition deeds, see Forsyth, pp. 74—84, 3rd ed.

Where the assignment is conditional, and the condition is not performed by the debtor, the creditors may avoid the deed, *Wiglesworth v. White*, 1 Stark. 218. If creditors are to execute a deed of assignment by a stated time, or the deed to be void if it be not executed within the time, it will be void at law, *Lewis v. Jones*, 4 B. & C. 511; but it is good in equity, if it be afterwards executed by all the creditors, *Spottiswoode v. Stockdale*, Cooper, 105. As to the proviso for making the deed void in case of non-execution by all the creditors, see Forsyth on Deeds of Composition, pp. 61—68, 3rd ed.

When creditors will be entitled to benefit of deeds of composition.

In equity, it is not absolutely necessary that the creditor should execute the deed, if he has assented to it, if he has acquiesced in it, or acted under its provisions and complied with its terms, and the other side express no dissatisfaction, the settled law of the court is, that he is entitled to its benefits, *per* Lord St. Leonard's, *Field v. Donoughmore*, 1 Dru. & W. 227; *Biron v. Mount*, 24 Beav. 642. But creditors who have not acceded to a creditor's deed before the debtor has taken the benefit of the Insolvent Debtors' Act, cannot afterwards come in and claim the benefit of it, *Biron v. Mount*, *supra*. Where the deed provides for creditors executing it "or otherwise acceding to it," a creditor cannot be said to have impliedly acceded to the provisions of a composition deed unless he has put himself in the

same situation with regard to the obligations imposed by the deed as if he had actually executed the deed, *Forbes v. Limond*, 4 De G. Mac. & G. 298.

Composition.

A debtor assigned all his property to trustees for the benefit of his creditors, with a proviso, that in case any creditor should not come in under the deed for six months after its date, he should be peremptorily excluded from the benefit of it; it was held, that a mortgagee of part of the property, whose solicitor corresponded with the trustees on the subject of the mortgage, but who did not express any intention to come in under the deed for some years afterwards, was not entitled to the benefit of the trust, *Gould v. Robertson*, 4 De G. & Sm. 509.

A debtor conveyed all his property to trustees for his creditors in consideration of a license and release, and afterwards died. Seven years after his death a creditor, who had notice of the deed shortly after its execution but did not execute it, filed a bill to be allowed to execute it and to have the benefit of it; but the court dismissed the bill because the debtor could not have the benefit of the consideration, *Lane v. Husband*, 14 Sim. 656.

Though a creditor, who is prevented by accident from signing a composition deed within the period specially appointed for that purpose, may obtain equitable relief, yet it will not be extended to one who has delayed making his claim and has set up a title adverse to the deed, *Watson v. Knight*, 19 Beav. 369.

Trust deeds were prepared for the benefit of the creditors, and a time was fixed within which the creditors were to be excluded from the benefit of the trust, the trustees having discretion to allow creditors to sign after the period fixed. A judgment creditor, relying upon his claim as paramount to the deeds, declined to execute during twenty-two years. The judgment subsequently turned out to be invalid, and he petitioned the Court of Chancery in a suit instituted for carrying into effect the trusts of the deeds, to be allowed the benefit of such deeds and offered to execute them; it was held, that there was no such case of mistake or misapprehension as to constitute an equity, and the petition was dismissed, *Brandling v. Plummer*, 27 L. J., Ch. 188.

A creditor's deed contained a proviso, that such creditors as should not execute or assent in writing to the deed on or before a certain day or within such further time not exceeding thirty days as the trustees should appoint, should be excluded from the benefit of the deed. The trustees issued an advertisement which stated their power of extending the time for execution. The debtor owed his son a large sum of money. The son was in America at the date of the deed. A solicitor who had acted for him when in England, on the last day for execution, wrote to the trustees on behalf of the son, signifying his assent to the deed. Subsequently he received from the son a power of attorney to execute the deed, and before the end of the period for

Composition.

which the trustees might have enlarged the time for executing the deed, he applied to them to permit him to execute on behalf of the son; it was held, that the son was entitled under these circumstances to the benefit of the deed, because it was the duty of the trustees to enlarge the time so as to allow his attorney to execute the deed, *Raworth v. Parker*, 2 Kay & J. 163; 25 L. J., Ch. 117.

Debtors, on June 11th, 1847, assigned by deed their property upon trust for their creditors, whose names and seals were thereunto affixed. In July, the trustees sold, and at the sale the plaintiff stated that he was a creditor, but mentioned no particulars of his demand, which was, in fact, one requiring investigation. The trustees advertized the 11th of October as the last day for creditors to execute the deed, and stated that creditors who had not signed by that day would be excluded. On a bill filed by the plaintiff in April, 1848, after a dividend had been made; it was held, that upon establishing that he was a creditor and executing the deed, he was entitled to participate in any future assets, but not to disturb the dividend already made, *Broadbent v. Thornton*, 4 De G. & Sm. 65.

A creditor assigned property by deed to trustees upon trust to sell and apply the clear proceeds in payment of the debts owing by him to such of the creditors as should before a certain day execute the deed, and the surplus, if any, to the assignor; and the deed contained a release by the creditors. The assignor and the trustees, who were also creditors, executed the deed at once. No other creditors executed before the stipulated day, but notice of the deed was given to them and they forebore to sue, and fifteen years afterwards some were permitted to execute. The trustees meanwhile having taken possession of and sold part of the property; it was held, that the deed was binding on the assignor, and that the creditors were entitled to have the trusts of it carried into effect, *Nicholson v. Tutin*, 2 Kay & J. 18.

No preference in the payment of debts under a trust deed.

10. Under a provision in a trust deed for the payment of debts of various descriptions, no preference is implied; which, if intended, must be clearly shown, as the court always leans in favour of equal payment of all debts, *Wadeson v. Richardson*, 1 V. & B. 103; but a trust deed for the payment of debts extends only to debts contracted at the time, *Purefoy v. Purefoy*, 1 Vern. 28.

When assignment for benefit of creditors is revocable.

11. It is established, that if a debtor conveys property in trust for the benefit of his creditors, to whom the conveyance is not communicated and the creditors are not in any manner privy to the conveyance, the deed merely operates as a power to the trustees, which is revocable by the debtor, and has the same effect as if the debtor had delivered money to an agent to pay his creditors, and before any payment made by the agent or communication by him to the creditors, had recalled the money so delivered, *Acton v. Woodgate*, 3 Mylne &

Keen, 495; *Walwyn v. Coutts*, 3 Mer. 707; 3 Sim. 14; *Garrard v. Lord Laudersdale*, 3 Sim. 1; 2 Russ. & M. 451; *Page v. Broom*, 4 Russ. 6; *Smith v. Keating*, 6 C. B. 136.

Composition.

The doctrine of a deed being considered a mere power in the hands of a mandatory or agent revocable until the deed is communicated by the agent or assented to by the creditors, does not apply to a case where the deed is made to one who has a beneficial interest under it, as where the assignment is to a trustee for the benefit of himself and other creditors, and has been communicated to him, *Siggers v. Evans*, 5 Ell. & Bl. 367.

Whether a mere communication to the creditors, without anything to show that they assented to the assignment, would be sufficient to render it irrevocable, is not satisfactorily settled, *Smith v. Keating*, 6 C. B. 158; but if the creditors, or any of them, *signify their assent* to it, by saying that they are satisfied, or if by any other mode from which their acquiescence can be inferred, the relation of trustee and *cestui que trust* is constituted between the trustees under the deed and such creditors, then the deed is no longer revocable by the debtor, *Harland v. Binks*, 15 Q. B. 713; *Mackinnon v. Stewart*, 1 Sim., N. S. 76.

A., on going abroad, granted and assigned to B. freehold and personal property upon trust and for management and realization and for payment of A.'s debts and of the surplus to A. The deed contained full powers for settling demands. B. communicated with the creditors upon the subject of the trust; it was held, that the creditors did not thereby acquire any right to sue the trustees for the purpose of having the trusts performed, *Cornthwaite v. Trith*, 4 De G. & Sm. 552.

12. The Bankrupt Law Consolidation Act, 1849, contains provisions respecting arrangements by deed. A deed of arrangement entered into between any *trader* liable to the bankrupt laws and his creditors, and executed by six-sevenths in number and value of the creditors whose debts amount to 10*l.* and upwards, is to be binding, 12 & 13 Vict. c. 106, s. 224. Any deed under this section is not binding on a creditor who has not executed it, unless such deed provides for the distribution of the whole of the trader's estate as in bankruptcy, *Tetley v. Taylor*, 1 Ell. & Bl. 521; *Drew v. Collins*, 6 Exch. 670; *Fisher v. Bell*, 12 C. B. 363; *Bloomer v. Darke*, 2 Scott, N. S. 165; see *Ex parte Calvert*, 4 Jur., N. S. 1258; *Tabor v. Edwards*, 4 Scott, N. S. 1. And such a deed is invalid if it empowers the trustees to give back to the debtor effects to the value of 20*l.*, although it may be executed by the requisite number of creditors and conveys the debtor's whole estate to the trustees, *Cooper v. Thornton*, 1 Ell. & Bl. 554; see *Larpent v. Bibby*, 5 H. L. Ca. 48. A deed of arrangement which excepts from the assignment the

Arrangements by deed under the Bankrupt Law Consolidation Act, 1849.

Composition.

wearing apparel of the debtor and his family is void, *March v. Warwick*, 1 H. & N. 158. A deed of arrangement under that act ought to provide for the distribution of all the debtor's estate amongst all his creditors, and not those only who execute the deed, *Ib.*, *Irving v. Gray*, 3 H. & N. 34; 4 Jur., N. S. 380; 27 L. J., Exch. 273.

The deed is not to be effectual upon any creditor who has not signed until the expiration of three months from notice of suspension and of the deed, unless the Court of Bankruptcy shall certify that the deed has been signed by such majority of creditors, 12 & 13 Vict. c. 106, s. 225.

The trustee or inspector (if any) or any two creditors, are to certify as to the proper number of creditors having signed, which certificate is to be filed with the registrar of the Court of Bankruptcy, *Ib.* sect. 226. An account of the debts of the trader and of the names, &c. of his creditors, is to be annexed to the certificate and to be verified by the affidavit of the arranging debtor, *Ib.* sect. 227. The creditors are to have the same rights as in bankruptcy, and not to be prejudiced with respect to their rights against third parties, *Ib.* sect. 228. In case of administration of the trader's estate not conformable to the deed of arrangement, any creditor may apply to the Court of Bankruptcy by petition supported by affidavit, *Ib.* sect. 229; see Shelford on Bankruptcy, pp. 435—441, 2nd ed. The forms of certificates of the account and of the affidavit under the above sections, are given in the orders of the Court of Bankruptcy, see *Ib.* pp. 598—601, 2nd ed.

Observations
on Forms
following.

The following precedents of composition deeds were not framed with reference to the provisions of the Bankrupt Law Consolidation Act, and if it be desired to make them available under the 224—227 sections of that act, care must be taken to adapt and settle them accordingly when the compounding debtor is subject to the bankrupt laws. A specimen of the form of such a deed will be found printed *in extenso* in the case of *Irving v. Gray*, 3 H. & N. 34; 4 Jur., N. S. 380.

The following precedents of deeds of composition may serve in many cases where the insolvent's affairs are not of a complicated nature, and may afford much assistance in preparing others. But deeds of this description frequently require a number of other provisions to meet the particular circumstances of the case, and often extend to great length, and ought to be settled by counsel. The Editor presumes that the above remarks will be fully justified by a perusal of Mr. Forsyth's Treatise on Deeds of Composition, and the numerous cases on that subject which have been reported since the publication of the last edition of that work in 1854. Moreover, the insertion of long deeds of this description is incompatible with the limits assigned to this work, and in addition, it seems probable that

some important alterations in the law relating to debtors and creditors will be made by the legislature at an early period. *Composition.*

13. A composition deed, or other instrument of composition between a debtor and his creditors, requires a stamp of 1l. 15s., and if it contains 2160 words or upwards, then the further progressive duty of 10s. for every entire number of 1080 words over and above the first 1080; but although signed by each creditor separately, yet being one whole transaction, requires but one stamp, *Bowen v. Ashley*, 1 N. R. 278. See *Wills v. Bridge*, 4 Exch. 193; *Goodson v. Forbes*, 6 Taunt. 174. Stamp on a composition deed.



No. CCLXXXVIII.

No.
CCLXXXVIII

Agreement between a Debtor and his Creditors where Inspectors are appointed to superintend the Insolvent's Affairs. *Deed of Inspection.*

Obs. As to the nature of this deed, see *supra*, Pref. sect. 1; and as to the stamp, see Pref. sect. 13.

This Indenture made &c. Between (Debtor) of &c. of the first part A. and B. two of the creditors of said (D.) (Inspectors) of &c. of the second part and (Creditors) the several other persons whose names and seals are hereunto subscribed and affixed by themselves or their respective attornies being also creditors of the said (D.) of the third part Whereas the said (D.) stands indebted to the several persons parties hereto of the second and third parts or their respective partners or constituents in several sums of money in the schedule hereunder written set opposite to their respective names And whereas the creditors of the said (D.) being satisfied that the stock and effects in trade of the said (D.) are sufficient to pay his debts did resolve and agree that it would be most advantageous to the creditors of the said (D.) that the said (D.) should be permitted to collect and dispose of his estate and effects under the inspection of the said (I.) who were unanimously chosen for that purpose for the term of two years from &c. last Now this Indenture witnesseth That in pursuance of the said agreement and in consideration of the covenants hereinafter contained on the part of the said (D.) They the said (I.) and the several other persons parties hereto of the third part Do and each of them Doth hereby [so far as they respectively may and lawfully can] give and grant unto the said (D.) full free and absolute liberty and license to manage collect get in and dispose of all his estate debts and effects or any parts thereof under the inspection and control of

Recital of debts.

Meeting of creditors.

Agreement for an appointment of inspectors.

Testatum.

Letter of licence.

No.
CCLXXXVIII
*Deed of
Inspection.*

Covenant not to
arrest debtor.

the said (*I.*) or either of them and in such manner as they shall judge to be most conducive to the benefit of the said creditors from the day of the date of these presents until the day of if the (*D.*) shall observe and perform the several covenants and agreements hereinafter contained and on his part to be observed and performed unless these presents shall become void by virtue of the provision in that behalf hereinafter contained *And* each and every of them the said several creditors parties hereto of the second and third parts separately and apart from each other doth hereby for himself his heirs executors and administrators but not one of them for the acts and deeds of the other or others of them or for the acts and deeds of the heirs executors and administrators partner or partners of the others or other of them doth hereby covenant with the said (*D.*) his heirs executors and administrators that they the said parties hereto of the second and third parts their executors administrators partners or agents or any other person or persons for them or by the order authority assent consent or procurement of them respectively shall not nor will sue arrest prosecute molest attach detain take in custody or execution imprison or otherwise impede or incumber him the said (*D.*) or his estate or effects in any manner howsoever he the said (*D.*) observing and keeping the agreements herein contained and which on his part are or ought to be observed and kept *And further* That if any of them the said parties hereto of the second and third parts respectively or the executors administrators or partners of any of them shall so do contrary to the true intent and meaning of these presents this present letter of licence shall operate to all intents and purposes and may be pleaded in bar to the said respective debts and to any prosecution suit or action that shall or may be brought against the said (*D.*'s) person goods or chattels as aforesaid within the time aforesaid as effectually as if he had a general release under the hands and seals of such creditors respectively for that purpose (*a*) *And* the said (*D.*) doth hereby in further pursuance of the said agree-

Debtor cove-
nants.

Effect of
licence by cre-
ditors.

(*a*) A debtor conveyed his life interest in certain property in trust for creditors parties to the deed, and the creditors, in consideration thereof, granted to the debtor licence to reside and attend to his affairs in any place he may think proper, without any suit or molestation in his person, or in his goods, chattels, and effects by any such creditors; and that in case of any suit or molestation by any such creditors, contrary to the true intent and meaning of such licence, the debtor should be wholly released and acquitted of the debt,

ment and in consideration of the said license hereinbefore given unto him as aforesaid for himself his heirs executors and administrators covenant with the said (*I.*) their executors and administrators and also with each of the several parties hereto of the third part in manner following (that is to say) That the said (*D.*) will as soon as may be draw out and state a true and exact account in writing of all his estate and effects as well real as personal and of the several charges outgoings and incumbrances now affecting the same and bring the said estate to a balance and will thereupon deliver such account after being signed by him unto the said (*I.*) *And also* will if thereunto required by them the said (*I.*) or either of them verify the truth of such accounts by solemn statutory declarations (*a*) or in such other manner as to the said (*I.*) shall seem expedient *And further* that he the said (*D.*) will at all times observe perform and execute the orders instructions and advice of them the said (*I.*) and each of them touching the sale disposal and management of the estate and effects of the said (*D.*) *And also* will use his best endeavours about the management and collecting receiving settling and converting into money all the estate and effects of him the said (*D.*) *And also* will when and so often as there shall be monies in hand arising from the said estate and effects pay the same into the hands of Messrs. or such other banker and bankers as the said (*I.*) shall direct in the names and to the account of the said (*I.*) *And further* that he the said *D.* will not at any time during the said term [unless he shall before that time have paid unto the said creditors the whole of his debts] convey alienate dispose of pledge or incumber any of his real or personal estate *And also* will not by himself or with any other person become engaged in or undertake any new trade

No.
CCLXXXVIII
*Deed of
Inspection.*

To state his
accounts.

To verify them
on oath.

To obey in-
structions.

To use his best
endeavours in
managing his
estate.

To deposit
monies with
bankers.

Not to dispose
of his estate
without con-
sent.

Nor undertake
any other trade.

and the deed might be pleaded in bar. It was held, that this amounted only to a licence by the creditor to the debtor to live unmolested, and did not operate as a release of the debt or a discharge of the debtor's estate; and that neither a suit by the creditors against the trustees and the debtor to enforce the trusts of the deed, nor an administration suit by the creditor against the estate of the debtor, after his decease, for payment of so much of the debt as the trust property was insufficient to pay, was barred by the trust deed, or amounted to an acquittance of the debt. It was held also, that the existence of the trust deed, and the covenants and licence therein contained, prevented the operation of the Statute of Limitations during the life of the debtor in respect of the debts for the payment of which the trust was created, *O'Brien v. Osborne*, 10 Hare, 92; 16 Jur. 960.

(*a*) See 5 & 6 Will. 4, c. 62, s. 18, *ante*, p. 42.

No. CCLXXXVIII <i>Deed of Inspection.</i>	or commercial transaction unless with the consent of the said (<i>I.</i>) <i>And</i> will not do or suffer to be done any act deed matter or thing whatsoever whereby any of the creditors of him the said
Nor give preference to any creditors.	(<i>D.</i>) shall or may obtain security (<i>a</i>) or securities for his or their debt or debts or any preference or priority of payment thereof or of any part thereof contrary to the true intent and meaning
Nor release debts, &c.	of these presents <i>And</i> will not release any debt or debts nor bring any action or suit for recovering any such debt or debts without the license and consent of the said (<i>I.</i>) or one of them
Keep books of account.	<i>And further</i> that the said (<i>D.</i>) will keep proper books of account and enter or cause to be entered therein a fair just and regular account of all receipts and payments and of all such other trans-
Preserve letters, &c.	actions matters or things as shall be requisite in order to show the true state and condition of the estate and effects of him the said (<i>D.</i>) <i>And also</i> shall and will preserve all letters received from and take copies of all letters written or sent by him to all and every
Cash to be drawn out, &c., on draft of inspectors.	his correspondents or other person or persons whomsoever concerning the trade and business of the said (<i>D.</i>) or any matter connected therewith <i>And also</i> shall and will permit them the said (<i>I.</i>) or either of them to examine and inspect the same accounts papers letters and writings relating to the estate and effects of the said (<i>D.</i>) when and as often as they or he shall think proper <i>And</i> it is hereby agreed by and between all the said parties hereto that all the monies bills notes or securities for money arising by or from the estate and effects of the said (<i>D.</i>) and from the gains and profits of his said trade [and which shall be paid into such banking house as aforesaid] shall there remain and not be drawn out except for the purposes hereinafter mentioned unless the said (<i>I.</i>) or the inspector or inspectors for the time being shall in the mean time think it will be for the benefit of the estate of the said creditors to lay out and invest the same in the purchase of government funds or exchequer bills [and which they or he is empowered to do from time to time when and so often as they or he shall think proper] and that all and every sum or sums to be taken out of the said banking house for the time being for any purpose whatsoever shall be by draft to be signed by one at least of the said (<i>I.</i>) <i>And</i> it

(*a*) The courts will set aside all securities whereby one creditor, under contracts of this kind, endeavours to obtain an undue advantage over the rest, *Leicester v. Rose*, 4 East, 271, recognized in *Howden v. Haigh*, 3 P. & D. 661; see further, *ante*, Pref. sect. 6, p. 562.

is hereby further agreed by and between all the said parties to these presents that it shall be lawful to and for the said (*I.*) or the inspectors or inspector for the time being out of the monies which shall be paid to their account as aforesaid to pay and discharge all the debts due and owing from the said (*D.*) unto any person or persons whomsoever which do not exceed the sum of £ respectively when the same shall become due And shall in the first place pay and satisfy all the costs charges and expenses attending the preparing engrossing and executing these presents and in the next place pay and satisfy all sums of money which in the judgment of the said (*I.*) or either of them shall be necessary for carrying on the said business of the said (*D.*) as aforesaid And in the next place shall pay and allow unto the said (*D.*) such annual sum of money not exceeding £ for his maintenance and support as the said (*I.*) or either of them or the inspectors or inspector for the time being shall think proper And subject to the payments aforesaid shall and may from time to time when and so often as there shall be in hand money sufficient to answer and pay shillings in the pound upon or in respect of the several debts now due or owing from the said (*D.*) to the several persons parties hereto of the second and third parts pay and distribute all such monies unto and amongst the several creditors rateably and proportionably according to the amount of their respective debts And after payment of all and singular the aforesaid debts and sums of money and of all the costs charges and expenses occasioned by or attending the execution of the trusts declared by these presents shall pay over the surplus of the said trust monies unto the said (*D.*) his executors or administrators for his and their absolute use or as he or they shall direct or appoint And it is hereby further mutually declared and agreed by and between all the said parties hereto and each and every of them the said creditors parties hereto of the second and third parts separately &c. [*the same as the covenant, ante, p. 570*] further covenant with the said (*D.*) his executors and administrators that when and so soon as all the present estate and effects of the said (*D.*) shall have been distributed among the said parties hereto of the second and third parts or otherwise applied under or by virtue of the provisions herein contained and the said (*D.*) shall have truly observed and performed all and every the covenants and agreements herein contained on his part to be performed and observed (and which the inspectors for the time being are hereby re-

No.
CCLXXXVIII
*Deed of
Inspection.*

Inspectors to
distribute
monies.
In paying debts
under £ .

Allowance for
the subsistence
of debtor.

Among the rest
of the creditors
rateably.

Surplus to
debtor.

Creditors to
grant release
to debtor.

No.
CCLXXXVIII
*Deed of
Inspection.*

Proviso that if
default be made
by debtor, &c.
this agreement
to be void.

quired to certify by a memorandum to be hereon indorsed) and that in case all the creditors parties hereto of the second and third parts or their executors or administrators shall not before the day of have received the whole of their respective debts now due from the said (*D.*) to the said creditors respectively and if the said (*D.*) shall on the said day well and sufficiently convey assign and deliver upon oath if required unto such person or persons as shall be named by the majority in number and value of the creditors parties hereto of the second and third parts at a meeting convened by circulars sent by any creditor of the said (*D.*) by the post or otherwise ten days at least before the time appointed for such meeting all such parts of his present estate and effects as shall then remain not divided or otherwise applied according to the true intent and meaning of these presents for the benefit of all the said present creditors of the said (*D.*) rateably and render a full account of all his proceedings and transactions relating thereto Then and in such case the aforesaid creditors parties hereto of the second and third parts or their respective partners executors or administrators will upon such assignment and delivering up respectively duly execute to the said (*D.*) a general and effectual release thereby releasing and for ever discharging the said (*D.*) his heirs executors and administrators from all the debts and sums then due and owing from the said (*D.*) to such creditors respectively and from all accounts actions suits claims and demands at law or in equity for recovery of the same debts respectively *Provided always* nevertheless and it is hereby expressly agreed to be the true intent and meaning of all the said parties hereto that if the said (*D.*) shall make default in performing all or any of the said covenants clauses stipulations and agreements hereinbefore contained and covenanted to be performed on his part or if all the creditors of the said (*D.*) whose debts amount to the sum of £ [except only such creditors as are possessed of any other securities for their debts and choose to rely thereon] shall not by themselves or their respective attornies or agents thereunto legally authorized duly execute these presents or a duplicate thereof or otherwise accede or agree to the terms hereof within next after the date hereof Then and in either of the said cases this present indenture and the license and liberty hereby given and every other article clause matter or thing herein contained so far as the same tend to restrain the said creditors parties hereto of the second and third parts from suing for or recovering their respective debts within the

time aforesaid shall cease determine and be utterly void *Provided always* and it is hereby further agreed and declared by and between the said parties to these presents that in case the said (*I.*) or either of them or any inspector to be appointed as hereinafter is mentioned shall die or shall refuse or decline or become incapable to act in the matters and things hereby delegated or entrusted to him or them as aforesaid Then and in every such case the major part in number and value of the creditors of the said (*D.*) present at a meeting convened by circulars sent by any creditor of the said (*D.*) to the other creditors by the post or otherwise ten days at least before the time appointed for such meeting may nominate and choose such other person or persons as they shall think fit to be an inspector or inspectors in the place or stead of such of the said inspector or inspectors who shall so die or refuse or decline or become incapable to act as aforesaid and every such person so to be chosen as aforesaid shall have the like powers and authorities in all things as the person or persons in whose room or place they or he shall have been chosen had or might exercise under or by virtue of these presents if living and continuing to act and as if the name or names of such new inspectors or inspector had been inserted in these presents instead of the names or name of the said (*I.*) or one of them And it is hereby further agreed and declared by and between all the said parties hereto that each of them the said (*I.*) and all and every other the said inspector and inspectors for the time being shall be indemnified protected and saved harmless by or out of the estate and effects of the said (*D.*) or otherwise by his said creditors according and in proportion to the amount of their said respective debts against or in respect of all transactions and personal engagements matters and things whatsoever which they or either or any of them shall lawfully do or cause to be done or enter into or order or direct in or concerning the business affairs estate or effects of the said (*D.*) by virtue of or in pursuance of these presents and that they the said parties hereto of the third part and every of them their and his heirs executors administrators principals and assigns shall and will from time to time and at all times allow and confirm the same in all respects And further That they the said (*I.*) and other the inspector or inspectors for the time being shall be reimbursed and repaid out of and from the estate and effects of the said (*D.*) or otherwise by the said creditors of the said (*D.*) according and in proportion to the amount of their respective debts all such costs

No.
CCLXXXVIII
*Deed of
Inspection.*

Power to appoint new inspectors.

Indemnity to inspectors.

Expenses to be allowed inspectors.

No.
CCLXXXVIII
*Deed of
Inspection.*

charges damages and reasonable expenses whatsoever as they or any of them shall respectively pay sustain or be put unto in about or concerning the matters and things aforesaid or in any-wise relating thereto (a) *In witness &c.*

—◆—
No. CCLXXXIX.

No.
CCLXXXIX.
*Agreement for a
Composition.*

*Memorandum of an Agreement at a Meeting of Creditors to
accept a Composition.*

Obs. As this is mostly an informal instrument not under seal, it is prudent to stipulate that a more formal deed shall be executed, see Pref. s. 2.

Memorandum. At a meeting of the creditors of A. B. of &c. held at on the day of It is agreed on as follows (that is to say) That we the creditors whose names are hereunder written have this day severally and respectively agreed for ourselves and for our several and respective executors administrators partners and assigns with the said A. B. his executors and administrators to accept the sum of shillings in the pound in full satisfaction and discharge of our respective debts within the space of calendar months from the date hereof to be secured by notes drawn upon and accepted by C. D. of &c. as the surety of the said A. B. *And* we the said creditors do hereby further agree that each of us the said creditors will execute a deed of composition to be forthwith duly prepared within days from the date hereof and will use our best endeavours to induce all the other creditors of the said A. B. to do the same.

Witness our hands this day of

A. B.
C. D.
E. F. &c.

No. CCXC.
Deed of.

No. CCXC.
Deed of Composition.

Obs. As to the effect of such a deed, see Pref. s. 6; and as to the stamp, see s. 13.

This Indenture made &c. Between (Debtor) of &c. of the first part (Surety) of &c. of the second part and (Creditors) the

(a) See Covenant to indemnify Trustees, *post*, p. 596, n.

several persons whose names and seals are hereunto subscribed and affixed by themselves or their respective attornies being creditors of the said (*D.*) of the third part *Whereas* the said (*D.*) is indebted to the several parties hereto of the third part in the sums of money respectively set opposite to their respective names at the foot of these presents and has agreed to pay to the said several persons parties hereto of the third part within the space of days from the date of these presents the

sum of shillings in the pound in full of their respective debts *And* the said (*S.*) having agreed to become surety with the said (*D.*) for the punctual payment of the said sum of shillings in the pound within the time aforesaid

They the said several creditors parties hereto have consented and agreed to accept the same in full of their respective debts and to execute and grant unto the said (*D.*) such letter of licence as hereinafter is mentioned *Now this Indenture witnesseth* That in pursuance of the said agreement on the part of the said (*D.*)

and (*S.*) and in consideration of the covenants and agreements on the part of the said persons parties hereto of the third part hereinafter contained each of them the said (*D.*) and (*S.*) *Doth* hereby for himself his heirs executors and administrators covenant with the several persons parties hereto of the third part and each of them their and each of their executors administrators and assigns that they the said (*D.*) and (*S.*) or one of them their or one of their heirs executors or administrators will pay unto the said several parties hereto of the third part their executors administrators or assigns on or before the day of

the sum of shillings in the pound upon the amount of their respective debts set opposite to their respective names at the foot of these presents and without any deduction or abatement whatsoever *Provided always* and it is hereby agreed and declared

between and by the said parties to these presents That if all the creditors of him the said (*D.*) whose debts respectively amount to £ or upwards shall not by themselves or their respective

attornies duly authorized and appointed for that purpose duly execute these presents within the space of days to be computed from the date hereof or if the said (*D.*) shall be adjudicated a bankrupt within months from the date hereof

Then and in either of the said cases this present indenture and every covenant clause and agreement herein contained shall cease determine and be utterly void *And this Indenture also witnesseth* That in consideration of the covenants and agree-

No. CCXC.

Deed of.

Testatum.

Debtor and
surety cove-
nant to pay.To pay —
shillings in the
pound.Proviso as to
creditors not
concurring, &c.Creditors give
letter of licence,

No. CCXC.
Deed of.

and covenant to
give a release
in general.

Stipulation as
to securities.

ments hereinbefore respectively made and entered into by the said (*D.*) and (*S.*) for the discharge of the said several debts in manner hereinbefore provided for They the said several creditors parties hereto by these presents *Do* and every of them *doth* give &c. as far as they respectively and lawfully may or can unto the said (*D.*) full &c. [*Letter of Licence, see Precedent, No. CCXCII., p. 579*] *And* the several creditors parties hereto *do* hereby covenant not to sue &c. [*see pp. 570, 580*] *And further* that if the said (*D.*) and (*S.*) their executors administrators or assigns shall duly (*a*) observe keep and perform the several covenants and agreements hereinbefore on their parts respectively contained *Then* they the said several creditors of the said (*D.*) parties hereto will at the costs and charges of the said (*D.*) his executors or administrators execute and give to him or them a general release and discharge for the said several and respective debts due and owing from the said (*D.*) *And* (*b*) deliver up all bonds bills notes and other securities for the same whether given by him or any surety or sureties for him *And moreover* that if the said several creditors or any of them or any of their executors administrators or assigns shall act contrary to the true intent and meaning of these presents *Then* that this present letter of licence shall and may be pleaded in bar to such debt or debts and sums of money *And* to any prosecution suit or other action that shall be brought against the said (*D.*) his executors administrators or assigns on account thereof as effectually as if the said (*D.*) had a general release under the hands and seals of such creditors respectively for that purpose *In witness &c.*

(*a*) As to the strict performance of the covenants by a debtor, see Pref. s. 4, p. 561.

(*b*) As to the necessity of this stipulation, see Pref. s. 5. If the contrary be intended, it must be stipulated in express terms, and then say, "*Provided always* and it is hereby declared and agreed by and between the said parties to these presents that nothing herein contained shall extend to or be construed to extend to prevent the said several creditors their executors &c. [*or 'the said A. B. or C. D.,' as the case may be*] from commencing any action or actions suit or suits against him the said (*D.*) for recovering payment of the money which shall or may become due or payable to them the said several creditors respectively upon or by virtue of any notes bills or other securities which they may now hold against the estate of the said (*D.*)"



No. CCXCI.

Another (short form).

No. CCXCI.

*Deed of.
(Short.)*

To all &c. We whose names and seals are hereunto subscribed and set creditors of (*Debtors*) of &c. send greeting *Whereas* the said (*D.*) are and do stand jointly indebted unto us the said creditors in divers sums of money which they are willing to pay and satisfy as far as they are able *Now know ye* That we the said creditors who have hereto subscribed our names and affixed our seals finding that the said (*D.*) are by losses and otherwise disabled to pay our full debts do severally and respectively agree and bind ourselves our heirs executors and administrators unto the said (*D.*) by these presents to accept of them the said (*D.*) their heirs executors and administrators after the rate of shillings in the pound in full satisfaction of all debts and sums of money which they jointly owe to us and every of us respectively the same to be paid in four equal payments on the days following (that is to say) on the day of the day of the day of and the day of so as the said (*D.*) for the more sure and better payment of the said several sums of money in satisfaction of our debts as aforesaid their executors or administrators do before the day of become jointly and severally bound with sufficient sureties unto us and every of us respectively by writing or obligation in due form of law to be made sealed and delivered to us each and every of us and to each and every of our use *Provided always* that neither these presents nor anything herein contained shall bind us or any or either of us who have hereunto subscribed our names and put our seals unless all and every of the creditors aforesaid shall have sealed and executed the same on or before the day of next ensuing *In witness &c.*

No. CCXCII.

Letter of Licence from Creditors to a Debtor.

No. CCXCII.

*Letter of
Licence.*

Obs. As to the effect of such a deed, see Pref. sect. 7; and as to the stamp, see sect. 13.

To all to whom these Presents shall come We whose respective names and seals are hereunto set and affixed creditors of

No. CCXCII. (*Debtor*) of &c. send greeting *Whereas* the said (*D.*) is indebted to us the said creditors in divers sums of money which he is at present unable to pay without making sale of his estate and effects to the great prejudice of his trade *And whereas* being satisfied of the integrity of the said (*D.*) and the solvency of his affairs we have agreed to allow him the space of to enable him to pay the said debts *Now know ye* That we the said several creditors of the said (*D.*) severally and respectively and for our several and respective heirs executors administrators partners and assigns but not for each other or for the heirs executors administrators partners or assigns of each other *Do* and each of us *doth* by these presents give and grant unto him the said (*D.*) free and full license liberty and authority to attend follow carry on conduct and manage his said trade and business and to transact and attend to all and every his affairs matters and things whatsoever at any place or places within the United Kingdom of Great Britain and Ireland at his free will and pleasure and without any let suit action arrest attachment or other impediment or molestation to be offered or done unto him his goods chattels monies or other effects whatsoever by us or any of us or our respective heirs administrators partners or assigns or by our or their means or procurement for and during the space of months next after the day of the date hereof if the said (*D.*) should so long live *And further* that we the said (*C.*) shall not nor will sue arrest attach or prosecute the said (*D.*) his executors or administrators for or on account of our or any or either of our debts or demands whatsoever *And moreover* that if any such action arrest attachment or prosecution aforesaid be prosecuted or commenced against the said (*D.*) either in his person goods or chattels within the said term or period by us or any of us or by any other person or persons by or through our or either of our procurement or consent contrary to the true intent and meaning of these presents Then the said (*D.*) by virtue hereof shall be henceforth and for ever acquitted exonerated and discharged of and from all and every the debts claims and demands whatsoever of such of us the said creditors our respective heirs executors administrators partners or assigns by whom or by whose order means or procurement he the said (*D.*) or his goods chattels monies estates or effects shall be so arrested imprisoned attached or damnified and this present letter of licence in any or either of the said cases shall be and operate as a release and may be pleaded in bar to the same debts

*Letter of
Licence.*

claims and demands and to every such action attachment arrest
prosecution or process as aforesaid *In witness &c.*

No. CCXCII.

*Letter of
Licence.*

No. CCXCIII.

No. CCXCIII.

*Release from Creditors to a Debtor under a Composition.**Release.**Obs.* As to stamp, see Pref. sect. 13.

To all &c. [see *last precedent*] We &c. creditors of (*Debtor*) *Recital.*
of &c. send greeting *Whereas* the said (*D.*) being unable to
pay and satisfy the whole of our respective demands hath pro-
posed to pay to us his several creditors the sum of shillings
in the pound upon the amount of our respective debts being the
sums set opposite to our respective names at the foot hereof
which we do hereby declare to be the full amount of our respec-
tive demands against him the said (*D.*) his estate and effects
And we the said creditors have consented to accept such com-
position in full discharge of our respective demands and to exe-
cute such release as is hereinafter mentioned and contained
And whereas we the said several persons whose names are here-
under written have respectively received the several sums of
money set opposite to our respective signatures *Now therefore* *Release.*
know ye That for the consideration aforesaid we the said several
creditors who have hereunto set our hands and seals *Do* and
each of us *doth* by these presents remise release and for ever
discharge the said (*D.*) his heirs executors and administrators
and his and their lands goods and chattels of and from
all debts claims and demands whatsoever as against him the
said (*D.*) which we or any of us ever had or could claim or de-
mand and also of and from all and singular the covenants con-
ditions and agreements and also all actions and suits and causes
of action and suit which we or any of us now have or hath or
ever had or can or may have against the said (*D.*) his executors
administrators or assigns in respect of our said debts or any
other matter cause or thing whatsoever concerning the same up
to the day of the date of these presents *In witness &c.*

Debt	Signature	Seal	Composition
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No. CCXCIV.

Release.

No. CCXCIV.

Indenture of Release from Two Creditors to One of Two Partners.

Obs. As to the effect of a release to one partner, see Pref. sect. 8, p. 563.

This Indenture made &c. Between (*releasors*) of &c. of the one part and (*releasee*) of &c. of the other part *Whereas* the said (*releasee*) carried on the trade or business of a merchant in partnership with I. F. of &c. under the firm of F. and E. *And whereas* there were various transactions between the said (*releasors*) and the said F. and E. and the said F. and E. having become embarrassed in their affairs stopped payment and upon the balance of accounts between the said F. and E. and the said (*releasors*) the said F. and E. stood indebted unto the said (*releasors*) in a considerable sum of money *And whereas* the said E. lately offered and proposed to the said (*releasors*) to pay to them the sum of £ and to give promissory notes for the sum of £ if the said (*releasors*) would give and execute unto the said E. a release or discharge for or in respect of the aforesaid debt or demand on the said F. and E. subject to the provisoes and restrictions hereinafter contained *Now this Indenture witnesseth* That in consideration of the sum of £ to the said (*releasors*) in &c. paid by the said (*releasee*) at &c. the receipt &c. And also in consideration of promissory notes given and made payable to the said (*releasors*) their executors administrators or assigns the receipt of which said notes (making together with the sum of so paid as aforesaid the sum of) they the said (*releasors*) do hereby respectively acknowledge *And pursuant to* and in execution of the said agreement *They the said (releasors) Do* and each of them *Doth* hereby remise &c. [see *last precedent*] *Provided nevertheless* and it is hereby agreed and declared by and between the parties to these presents that any matter or thing herein contained shall not release or be construed to release or in any manner to prejudice or affect any claim or demand which the said (*releasors*) or either of them have or hath or ever had or which they or either of them their or either of their executors administrators or assigns hereafter shall can or may have upon or against the said F. or upon or against the joint estate or effects of the said F. and E. in respect of the debts so due from the said F. and E. or any part

Proviso that
creditors may
sue the part-
ners.

of such joint estate or effects whether the same shall be in the hands of or recoverable from F. and E. or either of them or from any other person or persons whomsoever *And* that it shall and may be lawful for the said (*releasors*) their executors administrators and assigns from time to time when and as they shall be thereto advised to commence and prosecute any actions suits or other proceeding either at law or in equity against the said E. jointly with the said F. or against the said E. his executors administrators or assigns separately for the purpose of recovering or compelling or of enabling the said (*releasors*) their executors administrators or assigns to recover or compel payment or satisfaction of the debt so due and owing from the said F. and E. to the said (*releasors*) as aforesaid either by or out of the joint estate of the said F. and E. or by or from the said F. his executors administrators or assigns or his separate estate and effects *Provided always* and it is hereby further agreed and declared by and between the parties to these presents that in case default shall be made in the due payment of any two of the before mentioned promissory notes successively to fall due in such manner that any two of the promissory notes shall be due and unpaid at the same time Then and in such case these presents and every matter or thing herein contained shall from and immediately after such default be absolutely void and of no effect *And* the said sum of £ and all and every other sum or sums of money which may at any time be paid in discharge of any of the said promissory notes shall be carried to the account of the said F. and E. with the said (*releasors*) and all the debts claims and demands of the said (*releasors*) their executors administrators and assigns by reason or in respect of the default hereinbefore mentioned to be due to them from the said F. and E. either upon or against F. and E. jointly or separately their or either of their executors or administrators shall from and immediately after such default be in full force and virtue as to so much of the debts so due to the said (*releasors*) as aforesaid as shall remain unpaid in like manner to all intents and purposes as if these presents had not been made anything herein contained to the contrary thereof in anywise notwithstanding *In witness &c. (a).*

No. CCXCIV.

Release.Proviso in case
of default in
payment.

(a) N.B. This deed is to be delivered as an escrow, [see *next precedent*,] otherwise it would be advisable that the releasors should only covenant not to sue E.

No. CCXCV.

*Memorandum
indorsed on
Release.*

No. CCXCV.

Memorandum indorsed on the above Deed of Release.

This deed is deposited by the within named (*releasors*) and by G. B. of &c. on the part of the within named (*releasee*) with E. L. of &c. who is to deliver it to (*releasee*) his executors or administrators or to his or their order after due payment of the within mentioned promissory notes according to the tenor and meaning of the within written indenture of release but in case of any default in payment of the promissory notes or any of them according to the tenor and meaning of the within written indenture E. L. is to deliver up the indenture to the said (*releasors*) their executors or administrators to be cancelled In the mean time the indenture is to remain in the hands of the said E. L. for the purposes aforesaid.

See *Johnson v. Baker*, 4 B. & Ald. 440; *Christie v. Winnington*, 8 Exch. 290. As to delivering a deed as an escrow, see *post*, DEEDS.

CONVEYANCES IN TRUST FOR CREDITORS.

- | | |
|--|--|
| 1. <i>Validity of Deed or otherwise.</i> | 4. <i>Receipts of Trustees valid Discharges.</i> |
| 2. <i>Power of Sale to Survivors.</i> | 5. <i>Liability of Purchaser.</i> |
| 3. <i>Power to Sell or Mortgage.</i> | |

Validity of deed
or otherwise.

SECT. 1. A conveyance for the payment of debts generally, to which no creditor is a party, and in which no particular debts are expressed, has been held to be a fraudulent conveyance within the 27 Eliz. c. 4, as against a purchaser for valuable consideration, *Leech v. Leech*, 1 Chan. Ca. 249; Sugd. V. & P. 929, 11th ed.; but where a debtor between judgment and execution made an assignment of all his effects to trustees for the benefit of all his creditors, this was held not to be fraudulent and void under the 13 Eliz. c. 5, although not signed by any of the creditors, see *Pickstock v. Lyster*, 3 M. & S. 371.

Power of sale
to survivors.

2. A power of sale given to two or more trustees and their heirs will not survive, unless it be expressly so stipulated by the deed, *Townsend v. Wilson*, 3 Madd. 261; *S. C.* 1 B. & A. 608; see *Hall v. Domes*, Jac. R. 189; *Jones v. Price*, 11 Sim. 557; *Warburton v. Sandys*, 14 Sim. 622. Any question on the survivorship of a power is obviated in all instruments correctly framed, by giving the

power to the trustees and the survivors and survivor of them, &c., or to the trustees or trustee for the time being, acting in the execution of the trusts.

Conveyances in Trust for Creditors.

3. As it is doubtful whether, under a trust to raise money by sale or mortgage, the trustees having mortgaged can afterwards sell to pay off that mortgage, *Palk v. Lord Clinton*, 12 Ves. 48, it may be proper to provide for this event in the deed containing such a trust.

Power to sell or mortgage.

4. If the names only of the trustees be inserted in the usual clause, that the receipts of trustees shall be valid discharges, it is necessary for all the trustees to join in the discharge: where a trustee has only released to his co-trustee, and not absolutely renounced his trust, it has been held, that his signature is necessary to make a valid discharge, *Crew v. Dicken*, 4 Ves. 97. Any difficulty on this account is usually obviated by declaring that the receipts "of the trustees or trustee for the time being, acting in the execution of the trusts hereby created," shall be sufficient discharges, Sugd. V. & P. 849, 11th ed.

Receipts of trustees valid discharges.

5. Where an estate is to be sold for the payment of debts generally, the purchaser is not bound to see to the application of the purchase-money; but where the debts are scheduled, he is bound so to do, unless the deed, from the terms of it, exonerates him, Sugd. V. & P. pp. 834—836, 11th ed.

Liability of purchaser.



No. CCXCVI.

No. CCXCVI.

Conveyance of Freeholds in Trust for Creditors. (General Precedent.)

Conveyance in Trust for Creditors.

This Indenture made the &c. Between (Debtor) of &c. of the one part (Trustees) of &c. creditors of the said (D.) and trustees named and appointed on behalf of themselves and the other creditors of the said (D.) for the purposes hereinafter mentioned of the other part Whereas [the necessary recitals] And whereas the said (D.) is indebted to various persons in divers sums of money on or other securities which he is desirous of discharging and hath agreed for the more speedy payment thereof to convey the several hereditaments hereinafter described to the said (T.) in trust to sell Now this Indenture witnesseth That in pursuance of the said agreement He the said (D.) Doth by these presents grant and convey unto the said (T.) and their heirs All those messuages &c. together with all houses &c. And all the estate &c. of him the said (D.) in to &c. To have and to hold the said messuages lands hereditaments and all and

Testatum.

Habendum.

No. CCXCVI. singular other the premises hereby granted unto and to the use
Conveyance in of the said (*T.*) their heirs and assigns for ever upon the trusts
Trust for and to and for the intents and purposes and under and subject
Creditors. to the powers provisoes declarations and agreements hereinafter
 declared concerning the same (that is to say) *Upon trust* that
 they the said (*T.*) or the survivor of them or the heirs or
 assigns of such survivor shall without any further consent
 of the said (*D.*) his heirs executors or administrators imme-
 diately or at any time or times after the sealing and delivery of
 these presents make sale of all the said messuages and tenements
 lands hereditaments and premises hereby granted or intended
 so to be or any of them or any part or parts thereof as they or
 he shall think fit either together and in one lot or in separate
 lots and either by public sale or private contract or partly by
 public sale and partly by private contract for such price or prices
 sum or sums of money as the said (*T.*) or the survivor of them
 his heirs or assigns shall think fit with full power upon any such
 sale to make any stipulations as to title or evidence of title
 which they or he shall think fit and with full power to buy in
 or rescind any contract for sale of all or any part of the said
 hereditaments and premises which shall have been put up to
 sale by public auction and to resell or offer them again to sale
 in all or any of the modes aforesaid without being liable in any
 of the said cases to answer for any loss or diminution in price
 which may happen thereby (*a*) *And also* with like power and
 authority to convey and assure the said hereditaments to any per-
 son or persons who shall become the purchaser or purchasers of
 the same or any part thereof in such manner and form as he or
 they shall direct or appoint *And* in the mean time and until such
 sale or other disposition shall be made and as to such parts as re-
 main unsold or undisposed of *Upon trust* that they the said (*T.*)
 or the survivor &c. shall enter into and upon all and singular the
 same hereditaments and premises and receive and take the rents
 issues and profits thereof and also all arrears of rent and all
 and every sum and sums of money which are now due to the
 said (*D.*) from all and every the tenant or tenants of the said (*D.*)
And it is hereby agreed and declared by and between the parties
 hereto that all contracts agreements sales dispositions and con-
 veyances acts deeds matters and things whatsoever which shall
 or may be entered into made done or executed by the said (*T.*)
 or the survivor &c. shall be as valid as if he the said (*D.*) had

Trust to sell.

To receive
rents until sale.Contracts en-
tered into by
trustees to be
valid.(a) See *Taylor v. Tabrum*, 6 Sim. 281.

joined or concurred in the same *And* it is hereby further agreed and declared that the receipt and receipts in writing of the said (*T.*) or the survivor &c. or of the trustees or trustee for the time being acting in the execution of the trusts of these presents for any sum or sums of money payable to them or him under the same trusts shall be sufficient discharge and discharges to any purchaser or purchasers and other persons paying the same for so much money as shall be therein expressed or acknowledged to be received *And* that the person or persons to whom the same shall be given his her or their heirs executors administrators and assigns shall not afterwards be answerable or accountable for any loss misapplication or nonapplication thereof or of any part thereof *And* it is hereby further declared and agreed that the said (*T.*) and the survivor &c. shall stand possessed of and be interested in all and every the sum and sums of money which shall or may arise or come to their hands by any sale or disposition of the said premises or any part thereof and in respect of the rents issues or other proceeds thereof *Upon the several trusts* and to and for the several ends intents and purposes and under and subject to the several provisoes declarations and agreements which are declared contained and expressed of or concerning the same in or by a certain indenture already engrossed bearing even date with these presents and made between the said (*D.*) of the first part the said (*T.*) of the second part and the several other persons therein named as creditors of the said (*D.*) of the third part *And* the said (*D.*) for himself his heirs executors and administrators doth hereby covenant with the said (*T.*) their heirs and assigns in manner following &c. [See *covenant for title to freeholds*, PURCHASE DEEDS. *Clauses for appointment of new trustees, and for their indemnity and reimbursement.*]

No. CCXCVI.
*Conveyance in
Trust for
Creditors.*

Trustees' receipts to be valid discharges.

Declaration of trusts.

—♦—
No. CCXCVII.

A Trust Deed for the Benefit of Creditors, to accompany a Deed of Conveyance or Assignment. (General Precedent.)

No.
CCXCVII.
Trust Deed.

This Indenture made &c. Between (*Debtors*) of &c. bankers and copartners of the first part (*Trustees*) of &c. of the second part and the several persons whose names and seals are hereunto set and affixed of the third part *Whereas* the said (*D.*) lately carried on the business of bankers as aforesaid under the firm of &c. *And whereas* the said (*D.*) became and now are indebted

No.
CCXCVII.
Trust Deed.

Recital of business carried on in partnership.
Of carrying on business.

Of conveyance to trustees.

Testatum.

Declaration of trusts.

on their said partnership account unto the said several persons parties to these presents of the third part in several sums of money or engagements to replace bank stock or other property And the said (*D.*) are also severally indebted on their own private and separate account unto some of the said several persons who are or are intended to be parties to these presents And the said (*D.*) being unable at present to pay and discharge the full amount of the debts owing by them as aforesaid it was lately proposed and agreed by and between all the parties hereto that the said (*D.*) should convey and assign all the estate and effects belonging to them on account of their said partnership and also that each of them should convey assign and transfer all the estate and effects belonging to him as his separate property to the said (*T.*) their heirs executors administrators or assigns *In trust* and for the purposes hereinafter mentioned *And whereas* by indenture bearing even date with these presents and made &c. the freehold copyhold leasehold and personal estate of the said (*D.*) have been conveyed assigned and covenanted to be surrendered by them respectively unto and to the use of the said (*T.*) their heirs executors administrators and assigns *In trust* nevertheless to make sale of the same under the powers in the now reciting indenture contained and to pay apply and dispose of the produce of such sale upon such trusts and to and for such ends intents and purposes &c. as were declared of and concerning the same in and by an indenture therein mentioned to be already engrossed bearing even date with and made between the same persons as are parties thereto *Now this Indenture* (being the indenture so referred to as aforesaid) *witnesseth* That in pursuance of the said agreement and for carrying the same into effect it is hereby agreed and declared between and by the parties to these presents that the said (*T.*) and the survivors or survivor of them and the executors administrators and assigns of such survivor shall stand and be possessed of and interested in all and singular the monies to arise by such sale of the said freehold copyhold leasehold and personal estate and effects of the said (*D.*) conveyed and assigned to them the said (*T.*) their heirs &c. as hereinbefore mentioned and also of and in the rents of the said freehold copyhold and leasehold estate in the mean time until such sale thereof *Upon the trusts* and for the intents and purposes hereinafter declared of and concerning the same (that is to say) *Upon trust* that they the said (*T.*) or the survivors or survivor of them or the executors administrators or assigns of such sur-

vivor do and shall in the first place deduct retain and reimburse to himself and themselves all usual outgoings for rent taxes repairs salaries of clerks and agents and all such other costs charges and expenses as he and they respectively shall or may pay incur or be put unto in the execution of the trusts by these presents respectively and by the said indenture reposed in him and them *And* in the next place do and shall apply the clear residue of the produce of the separate estate of each of them the said (*D.*) respectively or a competent part thereof in payment of the debts owing by him separately to such of the creditors as have executed or shall execute these presents or their respective executors administrators or assigns and in proportion to the amount of the debts owing them respectively without any priority or preference until each of the said creditors respectively or his or her executors &c. shall have received the full amount of the debts owing to him her or them and do and shall apply the residue or surplus (if any) of the produce of the separate estate of each of them the said (*D.*) in aid of the partnership fund for the payment of the partnership debts until each of the said partnership creditors who have executed or shall execute these presents his or her executors &c. shall have received the full amount of the debts owing to him her or them respectively and do and shall apply the surplus (if any) of the share of each of them in the clear residue of the partnership effects in or towards such of his separate debts for which provision is hereby made as shall not have been discharged out of the clear residue of his separate estate in manner and pursuant to the directions hereinbefore contained in that behalf *And* lastly do and shall pay to each of them the said (*D.*) his executors administrators or assigns the clear residue or surplus (if any) of the produce of his separate estate as also of the surplus (if any) of his share of the produce of the partnership effects subject nevertheless to the provision hereinafter contained *i. e.* in case any one or more of the said (*D.*) is are or shall become a creditor or creditors of the other or others of them either by having paid or paying out of the produce of his effects or otherwise debts or the share of debts payable by the other of them *Then* and in that case such of them the said (*D.*) as shall be a creditor or creditors shall receive out of the surplus which would have belonged to such of them as shall be a debtor or debtors as aforesaid the money which shall be owing to him or them as aforesaid any thing hereinafter contained to the contrary thereof

No.
CCXCVII.
Trust Deed.

To pay rent,
taxes, salaries,
&c.

To apply separate estate to the payment of separate debts.

Pay partnership debts,

and surplus (if any) to the several debtors.

No.
CCXCVII.
Trust Deed.

Provision as to
the discharging
bills before they
are due.

To discharge
extents.

To discharge
debts not ex-
ceeding the sum
of £

Power to com-
pound with cre-
ditors, &c.

Proviso that
creditors may
release or ex-
tend the power
of compound-
ing debts.

in anywise notwithstanding *Provided always* and it is hereby declared and agreed by and between all the parties to these presents that in case there shall be any sum or sums of money owing or to be paid by the said (*D.*) on bills or otherwise which are not yet payable it shall and may be lawful for the said trustee or trustees for the time being to pay the same sums or a dividend thereon on being allowed discount or rebate for the time which shall remain unexpired at the time of the payment of the same sums of money in the same manner as if the same debts had been proved or claimed under an adjudication of bankruptcy *Provided also* that it shall and may be lawful for the trustee or trustees for the time being if he or they shall think proper out of the trust or any other monies which shall come to his or their possession under or by virtue of the grant and assignment and covenant to surrender bearing even date with these presents to satisfy and discharge the extents at the suit of the Crown which have been awarded against the estate and effects of the said (*D.*) *And also* after paying thereout all such costs charges and expenses as are hereinafter directed to be raised to pay the several creditors of the said (*D.*) or of any of them whose debts respectively do not exceed the sum of £ each the full amount of such debts nevertheless with this restriction that the proceeds of the partnership effects as far as the same will extend shall be applied in payment of such only of the same debts as are owing on the said partnership account and that the proceeds of the separate estates of each of them the said (*D.*) so far as the same will extend shall be paid and applied in payment of such of the same debts as are owing by each of them the said (*D.*) respectively upon his separate account [but the partnership property or the proceeds thereof may by way of loan to the separate estate of the said (*D.*) be applied in payment and discharge of the money to be levied on the said extents] *And* that it shall and may be lawful for the said (*D.*) or the survivor &c. or the trustee or trustees for the time being if he or they shall see occasion and in his and their discretion think it expedient to settle and agree with any of the creditors of the said (*D.*) jointly and severally whose respective debts do not amount to £ and to make them such payments or compensation for the same by way of composition as they may respectively agree to accept *Provided always* that if at any meeting of the creditors to be convened for the purpose [by the trustees or trustee for the time being by notice in writing stating

the time and place of such meeting to be delivered to the said creditors who shall have executed or acceded to these presents or their authorized agents or forwarded to them through the post at least six days before such meeting] or it shall be deemed expedient by the major part in value of the creditors then present and it shall be then and there resolved and determined that the power and provision lastly hereinbefore contained shall be released and abandoned or shall be enlarged and extended as to the amount of the debts to be comprehended within such provision Then and in such case the same shall be either released and abandoned by the said trustee or trustees for the time being and shall thenceforth cease and be void to all intents and purposes whatsoever but without prejudice to any composition or agreement previously made under or by virtue of the same provision or as the circumstances of the case shall require the trustee or trustees for the time being shall be at full liberty and have full power and authority to act under such enlarged or extended power of compounding debts as the case may be *And also* to pay to and for all or any of the creditors of the said (*D.*) either jointly or severally who by reason of infancy or other disability cannot legally or without breach of trust accede to these presents the full amount of the debts owing to the same respectively and also to appropriate and set apart the amount of the debts owing to creditors in India or in parts beyond the seas who shall not before a final dividend shall be made accede to and execute these presents *And finally* if it shall be deemed necessary or expedient to retain such sum or sums of money as shall be required to answer the full amount of the debts in respect of which such appropriation is to be made the balance or surplus of debts (if any) after satisfying the debts of the creditors residing abroad or so much of the same debts as the trustee or trustees for the time being shall think fit to satisfy shall be applied in the same or like manner as the residue of the produce of the said trust estates *Subject* nevertheless to the provision hereinafter contained (that is to say) *Provided also* and notwithstanding any thing hereinbefore contained it shall and may be lawful for the said trustee or trustees for the time being to compromise settle and ascertain the amount of the debt or debts claimed by the creditor or creditors respectively and also the fund on which the party or parties is or are or ought to be deemed a creditor or creditors and also to separate distinguish and allot the separate property from the partnership property

No.
CCXCVII.
Trust Deed.

To set apart
debts of cre-
ditors abroad.

No.
CCXCVII.

Trust Deed.

Provision as to
creditors having
securities.

Power to com-
pound debts
owing to the
debtors.

To sell upon
credit.

To refer dis-
putes to arbi-
tration.

according to the best of his or their judgment for the purpose of dividing the final residue or surplus (if any) between the said (*D.*) and their representative or representatives *Provided also* and it is hereby declared and agreed that any creditor or creditors who hath or have any security for his her or their debt or any part thereof shall or may execute these presents without prejudice to the same security or securities with the consent of the trustee or trustees for the time being and convert the same into money and receive a dividend rateably with the other creditors for so much of the same debt or debts as shall not be answered and paid out of the proceeds of the same security or securities *And* that the trustee or trustees for the time being shall or may in his or their discretion compound any debt or debts owing to the said (*D.*) or any one or more of them and accept part thereof or give further time for payment of the same debt or debts and shall or may sue or refrain from suing for any debt or debts as they shall think proper *And* that the trustee or trustees for the time being shall or may make any arrangement he or they shall deem proper with any person or persons holding any securities given by the said (*D.*) or any of them for the purpose of procuring possession of the lands and property comprised in any mortgage made or security given so nevertheless as that the consideration or price given upon such arrangement shall not exceed the amount or value of the principal and interest *And further* that the said trustee or trustees for the time being shall and may sell all or any part of the trust property for money to be paid at a future day or upon credit or for security or securities by way of bills of exchange or otherwise as he or they shall think advantageous *And* shall or may sell or convert into money all contingent interests and securities which cannot immediately be enforced with a prospect of advantage and all debts which shall be deemed bad or doubtful or which cannot be collected within reasonable time *And* shall and may be at liberty at any auction or auctions to buy in all or any part of the trust property which shall be offered for sale and to resell the same at any future auction or by private contract without being liable to answer for any loss or diminution of price upon such resale *And* it is hereby further declared and agreed that in case any doubt or difficulty shall arise in ascertaining the amount of any sum or sums of money due or payable to any creditor or creditors of the said (*D.*) either on their partnership

or separate account Then and in every such case the full and exclusive power of ascertaining the amount of the same debt or debts respectively shall be referred to such person or persons as the said trustee or trustees for the time being on the one part and the creditor or creditors the amount of whose debt or debts shall be called in question of the other part shall appoint for that purpose And that the award and determination of the person or persons so appointed shall be final and conclusive on all persons entitled to any interest or benefit under these presents And that all differences which shall arise respecting the amount of any debt or debts owing to the said (D.) or any one or more of them jointly or separately or touching or concerning any property claimed as their or any or either of their effects or belonging especially to any of their creditors shall be settled in the same or like manner if the trustees or trustee for the time being shall think it proper and requisite to settle the same And it is further provided and agreed that the trustee or trustees for the time being shall and may rent and hire such places and employ such persons and at such salaries as he or they shall think proper and necessary for carrying on the affairs of the trust and at the expense of the trust estate And also in case it shall be deemed expedient to defend any action or suit touching or concerning the trust estate the trustees or trustee for the time being shall or may exercise his or their discretion in commencing and defending the same and shall or may retain all costs charges and expenses in anywise relating thereto by and out of the monies which shall be received by him or them by virtue of the trusts aforesaid And further that it shall and may be lawful for the trustee or trustees for the time being to give and deliver to each or any or either of the said (D.) either the use for a time to be limited or the absolute property of all or any part of the household furniture and linen of each of the said (D.) anything hereinbefore contained in anywise to the contrary notwithstanding (a) And it is hereby declared and agreed that the receipt and receipts of the trustee or trustees for the time being shall be a full and effectual discharge and full and effectual discharges to all persons who shall become purchasers of the estate and effects of the said (D.) to be conveyed and assigned and covenanted to be surrendered by the said indenture bearing even date herewith and to his her or

No.
CCXCVII.
Trust Deed.

Power to rent
offices, hire
clerks, &c.

To defend
actions, &c.

To allow
debtors the use
of household
furniture, &c.

Receipts of
trustees to be
valid dis-
charges.

(a) This clause should not be inserted if the arrangement is to be effected under the Bankrupt Law Consolidation Act, 1849. See *ante*, p. 567, pl. 12.

No.
CCXCVII.
Trust Deed.

Purchasers not
liable.

To make a
dividend

of shillings
in the pound ;

and further
dividends.
To deposit
trust monies
with bankers.

To make out
an account at
stated times, to
be laid before
creditors.

their respective heirs executors administrators and assigns for such purchase money or so much thereof as shall by such receipt or receipts be acknowledged or expressed to be received so that no such purchaser or purchasers or any of them or any or either of their heirs executors administrators or assigns shall afterwards be subject or liable to attend or see to the application of such trust monies or any part thereof or be responsible or accountable for the misapplication of such trust monies or any part thereof by reason or means of the trusts hereinbefore declared or upon any other account whatsoever *And* each of the said (*T.*) for himself severally and respectively and for his several and respective executors administrators and assigns and not the one for the other of them doth hereby covenant with the said persons parties hereto of the third part and each of them their and each of their executors administrators and assigns that they the said (*T.*) or the survivors &c. shall and will from time to time as soon as conveniently may be after the date hereof make a dividend or dividends of all the trust monies which shall have been received by them or any or either of them by virtue or in pursuance of the said indenture of even date herewith unto and amongst all the creditors of the said (*D.*) who shall execute or accede to these presents rateably according to the several trusts hereinbefore expressed and declared concerning the same Subject nevertheless to the provisions hereinbefore contained and shall and will make the first dividend as soon as the money in hand shall be sufficient to pay shillings in the pound on the amount of the debts payable out of the same money and a further dividend from time to time as often as the money in hand shall be sufficient to pay shillings in the pound *And* that the money which shall from time to time be received on account of the said trust estate and all bills and securities for the same shall be deposited with Messrs. bankers in the name and names of the trustee or trustees for the time being *And also* shall and will once in every calendar months or oftener if they shall think proper make out a full particular of the account in the business of the trusts reposed in them as aforesaid and produce the same for the inspection of the said parties hereto of the third part at a meeting to be called for that purpose by fourteen days' notice in writing delivered to the said creditors or their authorized agents or forwarded to them through the post and at such meeting shall and will make all such statements and give all such explanations as shall be

requisite for the elucidation of the same accounts and shall and will in the execution of the said trusts reposed in them as aforesaid act to the best of their or his judgment for the benefit and advantage of all the persons interested in the same trust *Provided always* and it is hereby further declared and agreed that when all the trusts hereby reposed in the said (T.) or the survivors &c. shall be fully executed and performed as far as the same shall in the opinion of the trustee or trustees for the time being be practicable the said trustee or trustees for the time being shall call a meeting of the creditors of the said (D.) by fourteen days' notice to be delivered or forwarded as aforesaid and at such meeting shall and will produce their account respecting the trusts hereby in him and them reposed for the inspection of the creditors present at such meeting And that the major part in value of the creditors so present shall have full power by their resolution to allow the same accounts and that when so allowed they shall be binding and conclusive on all parties interested therein And that the same major part of the creditors shall also have full power to declare the trustee or trustees for the time being fully acquitted and released and he and they accordingly shall be acquitted and released from the trusts reposed in him and them and the trust accounts finally closed subject nevertheless to any payment by way of final dividend of the trust money then in hand *Provided always* and it is hereby declared and agreed by and between the parties to these presents that in case of the death of any one or more of the said (T.) or in case any of them shall refuse decline or be incapable to act Then and in either of these cases it shall and may be lawful for the major part in value of the creditors of the said (D.) to be present at any meeting to be convened by two or more of the creditors of the said (D.) who shall have become parties to or acceded to these presents of which meeting at least days' notice specifying the object time and place of such meeting shall be delivered to the said other creditors or their agents or forwarded to them through the post office to nominate and choose such person or persons as they shall think fit to be a trustee or trustees in the place of such trustee or trustees as shall die refuse decline or be incapable to act and every such person so to be chosen shall have the like power authority and control as any of them the said (T.) have or can or may have by virtue of these presents And further that the said (T.) or the survivors &c. or the trustee or trustees for the time being shall be charged

No.
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Trust Deed.

Trustees to be
released.

Appointment
of new trustees.

Indemnity to
trustees.

No.
CCXCVII.
Trust Deed.

Trustees to re-
imburse them-
selves.

To refer doubt-
ful matters to a
meeting of
creditors.

Covenant by
creditors to
indemnify the
trustees against
loss.

and chargeable only for such monies as the same trustee or trustees respectively shall actually receive by virtue of the trusts hereby reposed in him or them notwithstanding his their or any of their giving or signing or joining in giving and signing any receipt or receipts for the sake of conformity And that any one or more of them shall not be answerable or accountable for the other or others of them but each and every of them respectively for his own acts deeds and neglects or defaults only And that they or any or either of them shall not be answerable or accountable for any banker broker or other person with whom or in whose hands any part of the trust monies shall or may be deposited for safe custody or otherwise in the execution of the trusts hereinbefore mentioned or for any person or persons who shall be employed to assist them as aforesaid in the execution of the said trusts or for any other misfortune loss or damage which shall or may happen to the trust estate in the execution of the aforesaid trusts or in relation thereto unless the same shall happen by or through their own wilful negligence or default only *And also* that it shall and may be lawful for the trustees or trustee for the time being by and out of the monies which shall come to their or his hands by virtue of these presents to retain and reimburse himself and themselves respectively and also to allow to his and their co-trustee or co-trustees all costs charges damages and expenses which they or any of them shall or may suffer sustain expend disburse be at or put unto in or about the execution of all or any of the aforesaid trusts or otherwise by virtue of these presents (*a*) *Provided always* and it is hereby de-

(*a*) In some cases it seems advisable for trustees to require a covenant for their indemnity from the creditors, the following form is taken from the 8th Vol. of Byth. Conv. by Jarman, pp. 384, 385:—

And each and every of the creditors parties hereto of the third part severally separate and apart from the others of them doth hereby for himself and herself respectively and his and her respective heirs executors and administrators and as to and concerning only the acts deeds and defaults of himself and herself respectively and his and her respective heirs executors administrators and partners covenant with the said trustees their executors and administrators that in case any trustee or any one or more of the said trustees for the time being his or their heirs executors or administrators shall sustain or incur any losses costs damages or expenses by reason of the acceptance of the trusts hereinbefore contained or any act relating thereto Then and in that case each of the said creditors parties to these presents of the third part his or her executors administrators or partners when thereunto required by the trustee or trustees for the time being his or her executors or administrators

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Trust Deed.

clared and agreed by and between the parties to these presents that in case any question matter or thing shall arise in the management regulation or conduct of the affairs of the said (D.) or any or either of them which is not distinctly and clearly provided for by these presents and by the said indenture of &c. or in case the trustee or trustees for the time being shall not be able to determine and agree upon the course of conduct to be pursued in the management of the said trusts Then and in every such case it shall and may be lawful for the trustee or trustees for the time being to call a meeting of the creditors of the said (D.) by fourteen days' notice in writing specifying the object of such meeting and the time and place of meeting to the said creditors or their authorized agents to be delivered to them or forwarded to them through the post office and to submit such question matter or thing to the consideration of the creditors who shall or may be present at such meeting and that the determination of the major part in value of the said creditors present at such meeting respectively shall be binding and conclusive on all parties entitled to any benefit under the trusts hereinbefore expressed and declared *And further* that if any question shall arise upon the true construction of these presents or of any clause or provision herein contained the same shall be submitted to

Esquires Lincoln's Inn and the opinion of them or any two of them shall be binding and conclusive *Provided always* and notwithstanding all or any of the provisions hereinbefore contained the said (D.) shall as to the balance of the accounts subsisting or to arise between them as partners or on account of the partnership either by any payments made or hereafter to be made by any or either of the said partners or out of his or their effects beyond his or their proportional part or

Insolvents to
stand in the
same relation
to each other,
as in case of
bankruptcy.

shall and will answer and pay to the trustee or trustees for the time being his or their heirs executors or administrators such sum or sums of money as shall be the proportion of each of same creditors respectively of the same losses costs damages and expenses and that such proportion shall be estimated by the full amount of all the demands of the creditors respectively including the demands of the said trustees who are or shall become parties to these presents by executing or acceding to the same and for which no mortgage or specific security is held by the same creditors so that such creditor so executing or acceding to these presents his or her executors or administrators shall contribute in proportion to his or her demands respectively when compared with the full amount of the demands of all the creditors including the said trustees who shall execute or accede to these presents (except as aforesaid).

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Trust Deed.

Covenants from
debtors,

that they have
made out a true
account of their
estate;

will assist the
trustees in
managing the
concerns.

parts be in the same situation in all respects and have the same and like remedies as near as may be as he or they respectively would have had as to and against any one or more of them his or their executors or administrators in case they had become and had been adjudicated bankrupt and each of them had severally obtained his certificate under the same adjudication so that on the one hand no one or more of them the said (*D.*) his or their heirs executors or administrators may remain liable to the other or others of them his or their heirs &c. for any debt or duty which would have been discharged or relieved by such adjudication of bankruptcy and certificate thereunder and so that on the other hand no one or more of them his or their heirs executors or administrators may be discharged from any debt or duty to which he or they would have been liable in case of such bankruptcy and certificate under the same *And* each of them the said (*D.*) for himself his heirs executors and administrators and as to and concerning only the acts deeds and defaults of himself his heirs &c. doth hereby covenant with the said (*T.*) and each of them their and each of their executors and administrators that they the said (*D.*) respectively have at or before the time of their respective executions of these presents made a true and faithful account and discovery to the trustees parties hereto of all the estate effects and property real and personal belonging to them as well on their partnership as on their respective private accounts and that they have not concealed withheld or embezzled any part or parts thereof and that the said books of account signed by the said (*D.*) respectively and delivered up to the said (*T.*) at the time of the execution of these presents do contain a just and true account of all the partnership and private estate effects and debts of them the said (*D.*) respectively as far as it is in their power to make out the same accounts *And* that they the said (*D.*) and every of them shall and will at any time or times hereafter when thereunto requested make such discoveries in relation to and such explanations of their affairs as the trustees or trustee for the time being shall require and shall and will assist the trustee or trustees for the time being in conducting and managing the concerns of the said trust estate in such manner as to the said trustees shall seem reasonable *And further* that if any or either of them the said (*D.*) have or has wilfully concealed or shall wilfully conceal any part of his partnership or private property to the value of £ or shall be guilty of any wilful breach or default in performance

of his covenants herein contained or any of them Then and in that case on demand thereof made by any one or more of the said creditors parties hereto of the second and third parts his her or their executors or administrators the person or persons by whom such concealment breach or default has been or shall be made his or their heirs executors or administrators shall and will answer and pay to all and every the same creditor or creditors respectively his her or their executors administrators or assigns the full amount of the debts owing to the same creditor or creditors respectively or so much thereof as shall not have been previously received by him her or them under the trusts hereinbefore declared and contained *And this Indenture further witnesseth* That in consideration of the premises they the said several parties of the second and third parts *Do* and each of them *Doth* give and grant from the execution of these presents henceforth until the trustee or trustees for the time being by any writing under his or their hand or hands to be indorsed on these presents or a duplicate thereof shall declare the benefit of this present provision to be forfeited or otherwise determined and at an end by the nonconformity or misconduct of him or them the said (*D.*) full and free liberty &c. [see *ante*, *Letter of Licence*, p. 580] and that if the said (*T.*) or (*C.*) or any of them shall molest or interfere with the persons or effects of the said (*D.*) or any or either of them otherwise than in the execution of the trusts aforesaid and contrary to the true intent and meaning of these presents then the said (*D.*) or such one or more as shall be so molested as aforesaid or his or their heirs executors or administrators shall thenceforth be and by these presents he and they is and are clearly and for ever acquitted exonerated and discharged of and from all actions suits debts covenants securities claims and demands whatsoever at law and in equity of the creditor or creditors by whom they the said (*D.*) or any or either of them shall be so molested as aforesaid and that this present letter of licence may be pleaded &c. [*ante*, p. 578] *And further* that when and so soon as the said (*T.*) or the survivor &c. or the trustee or trustees for the time being shall by writing under his or their hand or hands to be indorsed upon these presents certify that the said (*D.*) have conformed themselves in all respects to their or his satisfaction so as to be entitled to be discharged from their debts then and immediately after such certificate shall be indorsed thereon and signed by the trustee or trustees for the time being they the said (*D.*) their executors and

No.
CCXCVII.
Trust Deed.

Letter of
licence.

On certificate
of conformity,
debtors to be
discharged from
their debts.

No.
CCXCVII.
Trust Deed.

Debtors having
obtained cer-
tificates not to
be sued, except
for conformity.

If sued for con-
formity, their
expenses to be
repaid.

administrators shall thenceforth be absolutely discharged of and from all and singular the debts and sums of money and other demands whatsoever which are now due and owing or secured or payable by or from the said (*D.*) or any of them to the said creditors in the way of their business and also upon their private or separate accounts respectively or upon or by virtue of any security or securities or any other consideration or account whatsoever and also of and from all and all manner of actions suits proceedings damages costs charges and expenses dues debts reckonings accounts claims and demands in anywise relating thereto *And further* that they the said creditors parties hereto of the second and third parts or any or either of them their or any of their executors or administrators or partners shall not nor will for or in respect of any debt or demand now due or owing to them or any or either of them arrest or attach the person or goods of any or either of them the said (*D.*) in whose favour such last mentioned certificate or certificates shall have been signed nor take his or their person or persons or his or their real or personal property in execution nor sue him or them in whose favour such last mentioned certificate shall have been signed in any other manner than for conformity only *And also* that in case the person or persons in whose favour such last mentioned certificate or certificates shall be signed shall appear to any action or actions suit or suits in which he or they shall be named for conformity or shall suffer the plaintiff or plaintiffs in such action or actions suit or suits to enter (as he she or they is and are hereby authorized to do) an appearance or as the case may be file common bail for the person or persons in whose favour such last mentioned certificate or certificates shall be signed such plaintiff or plaintiffs shall and will reimburse and pay to the said person or persons respectively who have obtained his or their certificate or certificates as aforesaid the full amount of all the costs charges damages and expenses which shall be incurred or sustained by such person or persons respectively by reason or on account of such actions or suits or any of them *In witness &c.*



No. CCXCVIII.

Assignment of Stock in Trade, Debts and Effects of Copartners for the Benefit of Creditors. (General Precedent.)

No.
CCXCVIII.
*Assignment by
Copartners in
Trust for
Creditors.*

This Indenture made &c. Between A. and B. of &c. carrying on trade in copartnership under the firm of A. and B. of the first part (Trustees) of the second part and the several persons whose names and seals are hereunto set and affixed (being joint and separate creditors of the said A. and B.) of the third part Whereas the said A. and B. have for several years past carried on the trade or business of merchants under the firm of A. and B. and have become and now stand indebted on their joint account to the several persons and in the several sums set opposite to their respective names in the first schedule hereunder written And whereas the said A. is indebted on his own separate account to the several persons parties to these presents of the third part in the several sums set opposite to their respective names in the second schedule hereunder written And whereas the said B. is indebted to the several persons parties hereto of the third part in the several sums set opposite to their respective names in the third schedule hereunder written And whereas the capital stock or property of the said A. and B. belonging to them on their joint account consists of a certain messuage warehouses and premises situate at and demised to them the said A. and B. by a certain indenture of lease bearing date the &c. for a term of years And also of divers goods merchandize vessels bonds bills and other securities debts and effects And whereas the separate property of the said A. consists of sundry household goods furniture china plate linen and also several policies of insurance And whereas the separate property of the said B. consists of &c. [here state it] And whereas the said A. and B. being unable to pay to every their joint and separate creditors the whole of their respective demands have agreed to convey and assign all and singular the estate property debts and effects belonging to them as well on their joint as on their separate account unto the said (T) their executors administrators and assigns upon and for the trusts intents and purposes and with under and subject to the powers provisoes and agreements hereinafter expressed declared and contained And whereas the said (Creditors) have consented to accept the offer of the said A. and B. subject to the provisoes and agreements hereinafter

Recital of
carrying on
business.

Of partners
being indebted.

Of property of
partners.

Of agreement
to assign.

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*Assignment by
Copartners in
Trust for
Creditors.*

General assign-
ment of effects.

mentioned and declared *Now this Indenture witnesseth* That in pursuance of the said agreement they the said A. and B. *Do* and each of them *Doth* by these presents assign unto the said (T.) their executors administrators and assigns *All that* messuage or tenement warehouses and premises comprised in the said in part recited indenture of &c. (a) and all the rents issues profits benefit and advantage to arise therefrom And all and singular the vessels merchandize stock in trade chattels debts and effects of them the said A. and B. as such copartners as aforesaid *And also* all and every the bills notes bonds policies of insurance and other securities And all other the property and effects of them the said A. and B. or either of them of what nature or kind soever and wheresoever situate and being and in whosoever hands custody or power the same or any of them or any part or parts thereof now are or at any time hereafter may be with their and every of their appurtenances And all the estate right title interest claim and demand whatsoever of them the said A. and B. or either of them as well jointly as separately of to in or out of the same premises and any of them respectively the wearing apparel of themselves and families excepted *To have and to hold* the said messuage or tenement warehouses and premises comprised in the said indenture of lease unto the said (T.) their executors administrators and assigns for the residue now to come of the said term of

years upon the trusts hereinafter declared *And to have hold* receive and take the said vessels merchandize stock in trade chattels debts &c. and all and singular other the premises hereby assigned or intended so to be unto the said (T.) their executors administrators and assigns *Nevertheless* as to all the premises hereby assigned or intended so to be *Upon trust* That they the said (T.) and the survivors or survivor of them or the executors or administrators of such survivor shall with all convenient speed sell and dispose of the said messuage warehouses and premises vessels merchandize stock in trade chattels and all and singular such parts of the joint and separate estate property and effects of the said A. and B. as are saleable for such price or prices as can be reasonably gotten for the same with power to buy in the said premises or any part thereof at any sale or sales by auction and to rescind abandon or vary any contract for sale and to resell the premises which shall be so

Trust to sell
and convert
into money.

(a) It is advisable to assign leaseholds by a separate deed upon trusts for sale. See *ante*, pp. 586, 587.

bought in or the contract for the sale of which shall be so rescinded or abandoned as aforesaid without being in anywise liable to any loss occasioned thereby and also with power to make any special or other conditions of sale either as to title or evidence of title or otherwise And do and shall get in and receive the several debts or sums of money and all other the premises hereby assigned or intended so to be And do and shall stand possessed of or interested in all the monies to arise from the sale of the said messuage warehouses and premises hereby assigned and also of and in all and singular the monies which shall be received for or in respect of the profits thereof until the sale thereof and which shall be collected got in and arise from the said joint and separate estates of the said A. and B. upon the trusts and to and for the intents and purposes hereinafter expressed of and concerning the same (that is to say) *Upon trust* in the first place to retain and reimburse themselves all costs charges and expenses of preparing and making such sales respectively and attending the recovery and getting in the said rents debts and other trust monies together with commission and allowances usual among merchants [*or “among merchants trading to and from &c.” as the case may be*] *And also* to pay all salaries and allowances to be made to clerks agents and subordinates *And* in the next place that they shall by and out of the said trust monies pay and allow to the said A. for the term of two years to be computed from the day of

next ensuing if he should so long live for the support of himself and his family a yearly sum not exceeding £ And in like manner shall allow to the said B. a yearly sum not exceeding £

And in the last place shall pay and apply so much of the said trust monies as shall arise from the sale getting in or conversion into money of the said partnership property of the said A. and B. in or towards payment of the partnership debts of the said A. and B. and do and shall pay and apply so much of the said trust monies as shall arise from the sale getting in or conversion into money of the separate property hereinbefore assigned of the said A. in or towards payment of the separate debts of the said A. And do and shall pay and apply so much of the said trust monies as shall arise from the sale getting in or conversion into money of the said separate property hereinbefore assigned of the said B. in or towards payment of the separate debts of the said B. And in case there shall remain or be any surplus of the joint and separate estate of the said A. and B. after all such payments and distributions as aforesaid *Then*

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*Assignment by
Copartners in
Trust for
Creditors.*

Declaration of
trusts.

To allow each
of the debtors
an annual sum
for two years.

To discharge
joint and separ-
ate debts.

Surplus to
debtors.

No.
CCXCVIII.
*Assignment by
Copartners in
Trust for
Creditors.*

Distinct ac-
counts to be
kept of the joint
and separate
estate.

upon trust to pay and divide the same to and between the said A. and B. their executors administrators and assigns respectively in proportion and according to their respective rights and interests therein and thereto Provided always that distinct and separate accounts shall be kept of the joint and separate estates and effects of the said A. and B. as well real as personal And in case there shall be any surplus of their joint estate after all their said joint creditors shall be paid and satisfied the amount of their whole demands then that the share and shares interest and interests in such overplus of them the said A. and B. whose estates shall have been applied as aforesaid shall be carried to the account of his or their separate estate or estates and be applied in or towards satisfaction of his or their separate debts And if there shall be any surplus of the separate estate or estates after all their separate creditors shall have been paid and satisfied their whole demands then that the overplus of such separate estate or estates shall be carried to the account of their joint estate and be applied in or towards satisfaction of the said joint debts (a) And it is hereby declared and agreed by and

Assignment of
separate estate
by one partner.

(a) Instead of assigning the joint and separate estates under one witnessing part, it may, sometimes, be most convenient to assign, first, the joint estate, and afterwards the separate estate of each debtor, by distinct witnessing parts. Where the JOINT estate has been previously assigned by A. B. in trust for the joint creditors the following assignment may be made of the separate estate of A.: "*And this Indenture also witnesseth* That in pursuance of the said recited proposal respecting the separate estate of the said (A.) *And in consideration of the premises he the said (A.) doth hereby bargain sell and assign unto the said (trustees) their executors administrators and assigns all &c. [describe the personal estate] And also all and singular the carriages horses furniture and other personal estate which the said (A.) is possessed of or entitled to for his own separate use independently of his said copartnership concern and not hereinbefore assigned by him And all the right title property claim and demand whatsoever of the said (A.) in to or out of the same premises Together with full and free power and right of entry in and upon all and every the messuages or tenements and hereditaments wherein the said carriages horses furniture and other effects and premises or any of them now are or hereafter shall be To have hold receive and take the said personal estate and premises lastly hereinbefore expressed to be hereby assigned unto the said (trustees) their executors administrators and assigns [insert a power of attorney from (A.) to the trustees where choses in action are assigned, which can only be recovered in (A.'s) name] And it is hereby agreed and declared between and by the said parties hereto that the said trustees or the survivor of them or the executors or administrators of such survivor shall and do forthwith as soon as conveniently may be absolutely sell and dispose of such part and parts of the premises hereinbefore assigned (being the separate estate of the said (A.)) as is or are of a saleable*

Trust for sale
and conver-
sion.

between the parties hereto that the receipts of the said (T.) and the survivors &c. or of the trustees or trustee for the time being acting in the execution of the trusts of these presents shall be valid discharges to the person to whom the same shall be given And that it shall be lawful to and for the said (T.) to sell and dispose of the said joint and separate estate and effects of the said A. and B. hereby assigned or intended so to be at such times and in such manner as they shall think fit and from time to time to make or cause to be made insurances of the said trust estate hereby assigned as he or they shall think

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Copartners in
Trust for
Creditors.*

or disposable nature either together or separately and in parcels by public auction or by private contract to any person or persons whomsoever, in such manner and subject to such conditions as to them or him shall seem proper with power to buy in any of the said premises at any sale by auction and to resell the same without being liable for any loss occasioned thereby and also to rescind or vary the terms of any contract for sale which shall have been entered into and shall and do make and execute all such acts matters deeds transfers and assurances as shall be requisite or necessary to effect such sale and disposition and shall and do receive collect and get in all sums of money now due and owing to the said upon his separate account and shall and do convert into money all other the premises lastly hereinbefore assigned (being the separate estate of the said (A.)) And it is hereby agreed and declared

that the said trustees and the survivor of them and the executors and administrators of such survivor shall stand possessed of and interested in the monies to arise by sale of the premises hereinbefore expressed to be hereby assigned being the separate estate of the said (A.) And also of and in the monies to arise by the sale disposition and conversion thereof after thereout paying and satisfying the expenses of preparing for and making or otherwise attending such sale disposition and conversion. Upon and for the trusts intents and purposes following (that is to say) *In trust* by with and out of such monies to pay and satisfy the several debts and sums of money due and owing to the separate creditors of the said (A.) or so much of such separate debts as the monies and premises being the separate estate of the said (A.) will extend to pay by an equal pound rate according to the amount of the said several separate debts of the said (A.) without any preference or priority of payment whatsoever And in case there shall be any surplus of the said separate estate of the said (A.) after payment of the said separate creditors Then as for and concerning such surplus monies and estates Upon such trusts as are hereinbefore declared for the benefit of the joint creditors of the said (partners) of and concerning their joint copartnership property And in trust to pay the ultimate surplus (if any) arising or to be produced from or by the said separate estate of the said (A.) after full payment and satisfaction of the several debts due and owing to his separate creditors and to the said joint creditors parties hereto unto the said (A.) his executors administrators or assigns And this Indenture further witnesseth [*assignment of B.'s separate property*] And it is hereby declared &c. [*the same trusts as before*] And it is hereby further declared and agreed " &c. see above.

Trust to pay
separate creditors
of A.

Assignment of
B.'s private
estate.

No. CCXCVIII. <i>Assignment by Copartners in Trust for Creditors.</i>	proper and expedient and to deduct the premium or premiums of such insurance and insurances <i>And further</i> that they the said (T.) and the survivors &c. shall not be answerable for any more monies goods wares or effects than what he or they shall actually receive by virtue of these presents nor liable to make good losses that shall happen in the management sale or disposal of the said trust estate and premises hereby assigned without the wilful neglect or default of them the said (T.) and the survivor &c. <i>And</i> the better to enable the said (T.) and the survivor &c. to recover and receive all and singular the aforesaid joint and separate estate and effects now due or belonging to the said A. and B. or either of them They the said A. and B. with the consent of the said several creditors parties hereto of the third part <i>Do</i> and each of them <i>Doth</i> by these presents make constitute and appoint the said (T.) and the &c. their true and lawful attorney and attornies irrevocable in their or either of their names places or stead but to and for the uses and purposes aforesaid to demand sue for recover and receive of and from the said several persons in the said schedules mentioned who are indebted to the joint and separate estates of the said A. and B. or either of them on any account whatsoever All and every the goods wares and merchandize debts or sums and other the premises hereby assigned And upon receipt of the same to give acquittances releases and such other discharges as shall be necessary and on nonpayment thereof to prosecute all and every such actions remedies and means as to them shall seem meet and also to settle and adjust or make composition or agreement of or for the same or any part thereof by arbitration or otherwise howsoever And also to adjust and settle all and every other account or accounts with any person or persons in relation to the premises and generally to do perform and execute all acts matters and things necessary and fit to be done in and about the premises as fully and effectually to all intents and purposes as they the said A. and B. or either of them might have done if personally present and these presents had not been made <i>And</i> the said A. and B. for themselves severally and respectively and for their several and respective heirs executors and administrators do hereby covenant with the said (T.) and (C.) parties hereto of the second and third parts in manner following (that is to say) That for and notwithstanding any act matter or thing done committed or suffered by them the said A. and B. or either of them the said hereinbefore recited lease
Indemnity to trustees.	
Power of attorney.	
Covenants from debtors.	
Lease valid.	

is a good and valid lease and that the said debts mentioned in the said schedules hereunder written or otherwise expressed to be due and owing to the said A. and B. by or from the several persons therein named are now well and truly due and owing and subsisting And that they the said A. and B. or either of them or any other person or persons for their use or by their order have or hath not at any time or times heretofore assigned incumbered received released or discharged all or any part of the hereby assigned goods wares merchandizes debts or effects And that they or either of them shall or will not without the consent of the said (T.) or the survivor &c. assign incumber receive release or discharge the same or any part thereof And that in case any debt or debts or sum or sums of money now due and owing unto them the said A. and B. or either of them is or are omitted to be mentioned in the said schedules hereunder written they the said A. and B. or either of them shall and will hereafter on request made to him or them or either of them transfer and assign all and every such debt or debts sum or sums of money unto the said (T.) or the survivor &c. or the trustee or trustees for the time being upon the trusts hereinbefore declared And it is hereby declared and agreed [*appointment of new trustees, see last Precedent, p. 595*] And this Indenture further witnesseth That in consideration of the assignment hereinbefore contained by the said (D.) they the said several parties hereto of the third part do hereby for themselves severally and respectively and for their several and respective heirs executors or administrators and not for the acts and deeds of the other or others of them but each of them for himself only his heirs executors and administrators covenant and agree with the said (D.) their executors and administrators that they the said respective covenanting parties or their respective heirs executors administrators and assigns shall not nor will at any time or times hereafter unless and until these presents shall become void under the proviso hereinafter contained commence or prosecute any action or actions suit or suits at law or in equity against the said (D.) or either of them their or either of their heirs executors and administrators or make any attachment of or upon their or either of their estates or effects for or by reason of any debt or debts now owing by the said (D.) to them or any of them And in case any or either of the said covenanting parties their or any or either of their respective heirs executors administrators or assigns shall commence any such action suit or

No.
CCXCVIII.

*Assignment by
Copartners in
Trust for
Creditors.*

Debts subsist-
ing.

To assign debts
omitted in
schedules.

Creditors cove-
nant not to sue.

No.
CCXCVIII.

*Assignment by
Copartners in
Trust for
Creditors.*

Creditors' right
to sue other
persons re-
served (a).

Deed to be void
unless creditors
concur in
limited time.

attachment contrary to the true intent and meaning of these presents that then and in such case the said (*D.*) respectively and their respective heirs executors or administrators shall and may plead these presents as a general release in bar of all and every such actions suits or attachments [*Provided always* that nothing herein contained shall extend or be deemed or construed to extend to prevent the said creditors parties hereto or any of them or their partner or partners of their or any of their respective heirs executors administrators or assigns from suing or prosecuting any other person or persons other than the said (*D.*) their executors administrators or assigns who is are or shall or may be liable or accountable to pay or make good to any of the said creditors all or any part of their said respective debts either as drawers endorsers or acceptors of any bill or bills of exchange or promissory note or notes or as being jointly and severally bound in any bond or bonds obligation or obligations or other instrument whatsoever or otherwise howsoever as if these presents had not been made] *And lastly* it is hereby agreed and declared between and by all and every the said parties hereto that in case any of the creditors of the said (*D.*) or either of them whose respective demands shall amount to the sum of £ shall not execute these presents and accede to the assignment hereby made within the space of three calendar months from the day of the date of these presents Then and in such case and from thenceforth this present indenture and every clause matter and thing herein contained shall be absolutely null and void to all intents and purposes whatsoever to the end that all the creditors of the said (*D.*) may have and be entitled to such remedy for recovering their said several and respective debts from the said (*debtors*) or either of them out of their respective estates and effects as they or any of them would have been entitled to if these presents had not been made *Provided nevertheless* and it is hereby declared that this provision shall not invalidate prejudice or affect any of the acts receipts dealings or transactions of the said (*T.*) their executors or administrators

(a) Although the stat. 12 & 13 Vict. c. 112, s. 228, provides, that no creditor shall be prejudiced or affected by being a party to a deed under the 224th section as to his right or remedy against any other person other than the debtor, it will frequently be advisable to insert a provision for reserving to creditors their remedies against sureties. See Forsyth on Deeds of Composition, pp. 85—110, 3rd ed., *Ex parte Harvey re Blakely*, 4 De G., M. & G. 881. See *ante*, pp. 567, 568, *post*, p. 613.

under or by virtue of the powers and authorities herein contained but that in case this proviso shall take effect the said (*T.*) their executors administrators or assigns shall and may after reimbursing themselves respectively all costs and expenses attending the sale conversion and getting in such part of the stock in trade credits and effects hereby assigned or intended so to be as shall then have been sold converted and got in pay over the residue or balance in their hands respectively of the monies arising therefrom *And also* deliver up such part or parts thereof as shall not have been sold converted and got in unto the said (*D.*) their respective executors administrators or assigns for his or their own absolute use and benefit *In witness &c. (a)*

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*Assignment by
Copartners in
Trust for
Creditors.*

Schedules.

- I. Joint and separate debts of A. and B.
- II. Separate debts of A.
- III. Separate debts of B.



No. CCXCIX.

Assignment by a Debtor of all his Estate and Effects for the Benefit of his Creditors.

No. CCXCIX.
*Assignment by
one Debtor in
Trust for
Creditors.*

This Indenture made the day of 185 Between (*Debtor*) of &c. of the first part (*Trustee*) of &c. accountant of the second part and the several persons whose names and seals are hereunto subscribed and affixed being creditors of the said (*D.*) of the third part *Whereas* the said (*D.*) is indebted to various persons and being unable to pay his creditors their respective demands in full has determined to convey and assign all his real and personal estate whatsoever unto the said (*T.*) upon the trusts and for the purposes hereinafter declared concerning the same *Now this Indenture witnesseth* That in consideration of the debts so respectively owing by the said (*D.*) he the said (*D.*) doth hereby grant bargain sell assign transfer and set over unto the said (*T.*) his heirs executors administrators and assigns all and

Testatum.

(*a*) In some cases it may be advisable to provide that, in the event of the deed becoming void, the trustees shall reconvey all such parts of the property as have not been sold or disposed of, and to pay over all money received under the trusts to the debtors, after retaining out of the monies all costs incurred by the trustees.

No. CCXCIX.

*Assignment by
one Debtor in
Trust for
Creditors.*

singular the lands tenements and hereditaments (if any) goods chattels monies credits estate and effects both real and personal of or to which the said (*D.*) is seised possessed or otherwise entitled for his own benefit in any manner whatsoever except the necessary wearing apparel of himself his wife and family and except leaseholds held at rack rent(*a*) Together with full and free power and right of entry into and upon all and every the messuages or tenements and hereditaments wherein the goods and chattels effects and premises hereby assigned or any of them now are or hereafter may be *And* all the estate right title interest possession property claim and demand whatsoever of the said (*D.*) of into out of or upon the premises hereby granted and assigned or intended so to be or any part thereof *To have and to hold* all and singular the said premises hereby respectively granted and assigned or intended so to be and every part thereof (subject nevertheless to any subsisting charges or incumbrances thereon) unto and to the use of the said (*T.*) his heirs executors administrators and assigns according to the nature and quality thereof respectively henceforth for ever Upon the trusts nevertheless and for the several intents and purposes hereinafter expressed and declared concerning the same *And* for better enabling the said (*T.*) his executors administrators and assigns to get in and receive the said credits monies and effects hereby assigned or intended so to be the said (*D.*) hereby constitutes and appoints the said (*T.*) his executors administrators and assigns to be the true and lawful attorney or attornies irrevocable of the said (*D.*) in his name or in the name or names of the said attorney or attornies to ask demand and receive from whomsoever it may concern all the said credits monies and effects hereby assigned or intended so to be and in case of the nonpayment or nondelivery of the same or any part thereof respectively to commence and prosecute any action

Power of attorney.

(*a*) Where there is any lease not giving a beneficial interest, it seems advisable to except it, that the trustees may not become liable to the rent and covenants. See *How v. Kennett*, 3 Ad. & Ell. 659; *Carter v. Warne*, Mood. & M. 479. Under an assignment to creditors by a debtor of all his stock in trade, book and other debts, goods, securities, chattels and effects whatsoever, except the wearing apparel of himself and his family; it was held, that a contingent interest in the residuary estate of a testator (to which the debtor was entitled in the event of his sister dying without a child) passed, *Ivison v. Gassiot*, 3 De G., M. & G. 958. See *Lunn v. Thornton*, 1 C. B. 379, ante, p. 464; *Ringer v. Cann*, 3 M. & W. 343; *West v. Steward*, 14 M. & W. 47.

or actions suit or suits at law or in equity or to take and pursue any other lawful means for enforcing the payment and delivery of the said credits monies and effects and any part thereof and also to substitute or appoint any person or persons to act under or in the place of the attorney or attornies for all or any of the purposes aforesaid and every such substitution at pleasure to revoke and the said (*D.*) hereby grants unto the said (*T.*) his executors administrators and assigns and to his or their substitute or substitutes the full power and authority of the said (*D.*) over the premises and hereby undertakes to ratify and confirm whatsoever the said (*T.*) his executors administrators or assigns or his or their substitute or substitutes shall lawfully do or cause to be done in or about the premises by virtue of these presents *And* the said (*D.*) for himself his heirs executors and administrators doth hereby covenant with the said (*T.*) his heirs executors administrators and assigns that the said (*D.*) will make a true and full discovery to the said (*T.*) or other the trustee or trustees for the time being of these presents of all his estate and effects and that he will when thereupon required by the said (*T.*) or other the trustee or trustees for the time being of these presents give such further explanations of his affairs and assist the said (*T.*) or such other trustee or trustees for the time being as aforesaid in managing and conducting the concerns of the said trust estate in such manner as by the said (*T.*) or the said trustee or trustees shall be thought reasonable and shall be required *And also* that the said (*D.*) will not release or intermeddle with the estate and effects respectively hereby granted and assigned or any part thereof respectively nor revoke or make void the power and authority hereinbefore given to the said (*T.*) his executors administrators and assigns or do any act by which the same may be revoked or become void *And also* that the said (*D.*) his heirs executors or administrators and every person whomsoever claiming under him or them will from time to time and at all times hereafter at the request of the said (*T.*) or other the trustee or trustees for the time being of these presents but at the expense of the said trust estate make do and execute any such further and other act deed grant assignment or other assurance in the law whatsoever for more effectually granting assigning or otherwise assuring the said several premises hereby granted and assigned or intended so to be unto the said (*T.*) or other the trustee or trustees for the time being of these presents and for enabling

No. CCXCIX.

*Assignment by
one Debtor in
Trust for
Creditors.*

Covenants by
debtor,

to make full
discovery of
effects.

Not to release.

Further assur-
ance.

No. CCXCIX. him or them to get in recover and receive the monies credits and effects hereby assigned and every part thereof respectively upon the trusts aforesaid and according to the true intent and meaning of these presents as by the said (T.) or such other trustee or trustees as aforesaid or his or their counsel in the law shall be reasonably advised and required and shall be tendered to be made done and executed *And this Indenture further witnesseth* and it is hereby declared and agreed by and between the said parties to these presents that the said (T.) his heirs executors administrators and assigns shall hold the said estate and effects hereby granted and assigned or intended so to be *Upon trust* as soon as conveniently may be after the execution of these presents to sell and dispose of all the lands tenements and hereditaments (if any) goods chattels and saleable effects either by public auction or private contract for the best price or prices that can be obtained for the same (a) and collect in all the monies and credits and out of the monies which shall be so realized in the first place pay and satisfy the costs charges and expenses incurred since the day of last in the investigation of the affairs of the said (D.) and of and relating to the preparation and execution of these presents and the carrying into execution the trusts hereby created including therein the usual professional charges of the said (T.) and other the trustee or trustees for the time being as an accountant or accountants in the matter relating to the said trusts and upon trust to divide the residue of the same monies as and when the same shall from time to time be gotten in and received and shall amount to a competent sum amongst all the creditors of the said (D.) who shall execute or accede to these presents within three calendar months after the date hereof or the executors and administrators of the said creditors respectively in rateable proportions according to the amount of the respective debts now owing by the said (D.) or to which he is now liable to the said creditors and in satisfaction (so far as such monies will extend) of the said debts and in case the said monies shall be more than sufficient to pay the whole amount of the principal of the said debts respectively then upon trust to pay interest for the said debts respectively after the rate of Five pounds per centum per annum to be computed upon such

Assignment by one Debtor in Trust for Creditors.

Trust to sell estates,

to pay costs;

and creditors executing this deed,

to pay interest.

(a) See *ante*, p. 586, for a fuller trust for sale which is generally to be preferred.

of the said debts as are now due from the date of these presents and upon such of the said debts as shall become due subsequently from the day or respective days of their becoming due (a) and in case after payment of the costs charges and expenses aforesaid and the several debts aforesaid with interest for the same any surplus of the said monies shall remain then upon trust to pay the said surplus to the said (D.) his executors administrators or assigns for his or their own use and benefit *Provided always* That it shall be lawful for the said (T.) or such other trustees or trustee as aforesaid to delay making any dividend amongst his creditors until he or they shall have sufficient to pay in the pound on their respective debts unless directed to pay a less dividend by a majority in value of creditors present at a meeting to be convened as hereinafter mentioned for that purpose or unless the ultimate amount on the final realization of the trust funds shall be insufficient to pay so large a dividend *Provided and it is* hereby declared that all monies to be received by the said (T.) or other the trustees or trustee for the time being of these presents shall be paid in the name of the said (T.) or other the trustee or trustees for the time being as aforesaid to a separate account entitled "the trustee of (D.) in the banking house of Messrs. & Company (or such other bankers as shall be named by the majority in value of the creditors present at a meeting to be convened as hereinafter mentioned) there to remain for safe custody until a division shall be made thereof in manner aforesaid but with full power for the said (T.) or such other trustees or trustee as aforesaid in the meantime to invest the same monies or any part thereof in the purchase of exchequer bills or the government funds or securities *Provided always* that the said trust monies applicable to the payment of the said creditors shall be paid and applied and the same right and equities shall prevail in respect thereof and in respect to any charge or liens on any of the trust property as if the said (D.) had been duly declared and adjudged a bankrupt on the day of the date of execution of these presents *Provided also* that nothing herein contained nor any release or letter of licence to the said (D.) which shall be executed by any of his said creditors shall be construed to extend to exclude or prevent any creditor or creditors of the said (D.) from suing any person or persons who may have become bound as the surety or

No. CCXCIX.

*Assignment by
one Debtor in
Trust for
Creditors.*

Dividend may
be delayed.

Monies to be
paid to bankers.

Creditors'
remedy against
sureties pre-
served.

(a) See *Bateman v. Margerison*, 16 Beav. 477; *Clowes v. Waters*, 21 L. J., Ch. 840.

No. CCXCIX. sureties of the said (*D.*) or who is or are in any manner liable for the payment of any debt or debts of the said (*D.*) but that the said creditor or creditors shall have the same remedy against such surety or sureties as the same creditor or creditors might have had if these presents had not been made *Provided* nevertheless that no creditor or creditors of the said (*D.*) shall be entitled to receive any dividend or dividends by virtue of these presents until such creditor or creditors shall have verified or proved his her or their debt or respective debts by solemn statutory declaration or otherwise to the reasonable satisfaction of the said (*T.*) or other the trustees or trustee for the time being of these presents and that no creditor holding any security shall be entitled to a dividend on any greater sum than shall remain due to him after realizing his security by sale of the property therein comprised for the best price that can be obtained for the same *Provided also* and it is hereby further declared that the receipt of the said (*T.*) or other the trustee or trustees for the time being of these presents for any monies or effects to be paid or delivered to him or them by virtue of these presents shall be effectual discharges to the person or persons paying or delivering the same and that he or they shall not be in any way responsible for the application thereof *Provided also* that it shall be lawful for the said (*T.*) or other the trustee or trustees for the time being to adjust and settle all accounts between the said (*D.*) and his late partners or between him and any other person or persons and to submit all disputes concerning the trust affairs to arbitration or other settlement to accept any compromise or composition in respect thereof to commence or prosecute any suit or action at law or in equity relating to any part of the said trust estate or to stay proceedings therein to keep up any policies of assurance on the life of the said (*D.*) at the expense of the trust estate or to surrender or otherwise dispose of the same and generally to act in relation to the said trust affairs as the said (*T.*) or other the trustee or trustees aforesaid shall in his or their discretion think most to the advantage of the trust estate and to apply any of the trust monies for any such purposes *Provided nevertheless* that as between the said (*T.*) or the trustee or trustees aforesaid on the one hand and the said creditors on the other hand but not so as to affect persons dealing with the said (*T.*) or other the trustee or trustees aforesaid under the powers hereinbefore contained no action at law nor suit in equity shall be commenced or being now pending shall be prosecuted at the expense of the trust estate, nor shall any account claim or

*Assignment by
one Debtor in
Trust for
Creditors.*

Creditors to
prove debts.

Receipts of
trustees to be
sufficient.

Trustee may
settle accounts,
&c.

Certain steps
not to be taken
unless with
consent of cre-
ditors.

demand relating to any sum or sums of money or property exceeding in amount or value the sum of £ be adjusted settled or compromised by the said (T.) or other the trustee or trustees aforesaid without the previous consent of the majority in value of the creditors aforesaid who by themselves or their agents shall be present at a meeting convened for the purpose by the said (T.) or such other trustee or trustees as aforesaid (or by creditors who shall have become parties to or acceded to these presents as aforesaid whose debts shall amount in the aggregate to £ at least) of which meeting at least six days' previous notice specifying the object of such meeting and the time and place of meeting within the City of London shall have been given by the person or persons convening the meeting to the said creditors who shall have executed or acceded to these presents or their authorized agents such notice to be delivered to the said creditors or their agents or forwarded to them through the post office *Provided also* that it shall be lawful for the said (T.) or such other trustee or trustees as aforesaid to make such allowance or allowances to the said (D.) out of the trust money for assisting in the preparation of the accounts and for rendering assistance in the winding up of the said affairs as to the said (T.) or such other trustee or trustees as aforesaid shall seem reasonable not exceeding the sum of £ *Provided also* and it is hereby further agreed and declared that in case the said (T.) or other the trustee or trustees for the time being of these presents or any of them shall die or become incapable or unwilling to act in the trusts aforesaid it shall be lawful for the majority in value of the said creditors who by themselves or their agents shall be present at any meeting to be convened as hereinbefore mentioned by any resolution in writing signed by the chairman of such meeting on behalf of the persons present to appoint any person or persons to act in the stead of the said (T.) or such other trustee or trustees as aforesaid and thereupon all the said trust estate and effects shall be forthwith conveyed assigned and assured so as that the same respectively may become vested in the trustee or trustees so to be appointed as aforesaid either alone or as the case may be jointly with such other trustee or trustees as aforesaid and every such new trustee and also every person who shall have been constituted a trustee to these presents by any court of competent jurisdiction and whenever more than one person shall be constituted trustees the surviving trustees or trustee shall as well before as after the

No. CCXCIX.

*Assignment by
one Debtor in
Trust for
Creditors.*

Allowance to
debtor.

Power to
appoint new
trustees.

No. CCXCIX. trust estates shall have been conveyed transferred or assigned as aforesaid have such and the same powers and authorities to all intents and purposes whatsoever as if he had originally been nominated a trustee in these presents [*Clauses to be added for the indemnity and reimbursement of Trustees*] *In witness &c.*



No. CCC.

No. CCC.

Short Assignment in Trust for Creditors.

Assignment of Personal Estate and Effects to Trustees for the benefit of Creditors. (Concise Form.)

Recital.

General assignment.

This Indenture made the day of one thousand eight hundred and Between (*Debtor*) of &c. of the first part (*Three Trustees*) trustees for themselves and the rest of the creditors of the said (*D.*) parties hereto of the second part and the several other persons whose names and seals are hereunto subscribed and set being respectively creditors of the said (*D.*) of the third part *Whereas* the said (*D.*) is justly indebted unto the said parties hereto of the second and third parts in the several sums set opposite to their respective names in the schedule hereunder written which the said (*D.*) is unable to pay in full and the said (*D.*) hath therefore proposed and hath agreed to assign all his estate and effects unto the said trustees for the benefit of his creditors as hereinafter mentioned *Now this Indenture witnesseth* That in pursuance of the said agreement and in consideration of the premises and of five shillings of lawful money of Great Britain to the said (*D.*) in hand paid by the said trustees at or before the execution hereof the said (*D.*) *Doth* by these presents bargain sell assign transfer and set over unto the said trustees their executors administrators and assigns *All* [*describe the property*] and all and every the stock in trade goods wares merchandizes household furniture fixtures plate linen china books of account debts sum and sums of money and all securities for money vouchers and other documents and writings and all other the personal estate and effects whatsoever and wheresoever of the said (*D.*) in possession reversion remainder or expectancy together with full and free possession right and title of entry in to and upon all and every of the messuages or tenements and premises wherein the said several effects and premises now are *To have and to hold* the said stock in trade and all other the estate effects and premises hereby assigned or intended so to be unto the said trustees their executors admi-

nistrators and assigns absolutely *Upon trust* nevertheless to collect and receive or sell and dispose of the said hereby assigned premises and every part thereof either by public sale or private contract and in one or more lot or lots under such conditions of sale and for such prices as they shall think expedient and with liberty to buy in at any auction and to resell without being liable to any loss occasioned thereby and also to rescind or vary any contract for sale and with liberty to give any credit or to take any security for the purchase money or any part thereof as to the said trustees their executors or administrators shall seem proper *And upon trust* out of the monies to be received by virtue of these presents to pay all costs and expenses of proposing preparing ingrossing and executing these presents and attending or relating to the said hereby assigned premises or the trusts hereby created *And* in the next place to pay retain and satisfy rateably and proportionably and without any preference or priority to themselves the said trustees and their partners and the other persons parties hereto of the third part who shall execute these presents within from the date hereof the several debts or sums set opposite to their respective names in the said schedule hereto *Subject* to the covenant hereinafter contained for verifying the amounts thereof and to pay the residue (if any) of the said monies unto the said (D.) his executors administrators and assigns *Provided nevertheless* that such creditors of the said (D.) as shall not execute or assent in writing to take the benefit of these presents on or before the day of next or within such further time not exceeding thirty days as the said trustees shall by writing under their respective hands and seals declare shall be excluded from all benefit under these presents *Provided always* That it shall be lawful for the said trustees [to make to the said (D.) such allowance or return to him such part of his household furniture working tools or effects not exceeding the value of £ as they may deem expedient *And also* (a)] to employ the said (D.) or any other person or persons in winding up the affairs of the said (D.) and in collecting and getting in his estate and effects hereby assigned and in carrying on his trade if thought expedient by them and to allow the said (D.) or any other person or persons so employed as aforesaid out of the said trust estate such sum and sums as to the said trustees shall seem proper *And* the said (D.) *Doth* hereby make constitute and appoint

No. CCC.

Short Assignment in Trust for Creditors.

Trust to sell.

To pay costs and debts.

Creditors not executing to be excluded.

Allowance to debtor.

Power of attorney.

(a) As to the words within brackets, see *ante*, p. 593.

No. CCC.

Short Assign-
ment in Trust
for Creditors.

Receipts.

Amount of
debts to be
verified.Powers given
to trustees.

the said trustees and the survivors and survivor of them and the executors and administrators of such survivor to be his true and lawful attornies or attorney to ask demand sue for recover and receive all debts and sums of money owing to the said (*D.*) and all other the premises hereby assigned or intended so to be and on payment or delivery thereof or of any part thereof respectively to sign seal and execute receipts acquittances or other discharges for the same respectively and on nonpayment or nondelivery thereof respectively to commence and prosecute any action suit or other proceedings whatsoever for recovering and compelling the delivery or payment thereof respectively *And also* to adjust liquidate and finally settle all accounts dealings and transactions whatsoever relating to the said trust estate and premises and for all or any of the purposes aforesaid to use the name of the said (*D.*) and whatsoever the said attornies or attorney shall lawfully do or cause to be done in the premises the said (*D.*) doth hereby for himself his heirs executors and administrators covenant with the said trustees their executors administrators and assigns to allow ratify and confirm *Provided always* and it is hereby agreed and declared that every receipt of the said trustees or trustee for the time being for any money payable to them or him by virtue of these presents shall effectually discharge the persons paying the same from being obliged to see to the application thereof or from being answerable or accountable for the misapplication or nonapplication thereof *Provided also* and it is hereby further covenanted and agreed by and between the said several parties hereto that it shall be lawful for the said trustees at the expense of the trust estate to require the amount of any debt or debts of any or either of the several creditors parties hereto to be verified by solemn statutory declaration or in such other manner as to the said trustees shall seem expedient and in the event of any such creditor or creditors refusing or failing so to verify his or their debt or debts then such creditor or creditors so refusing or failing as aforesaid shall lose all benefit dividends and advantage to be derived from or otherwise claimed under these presents anything herein contained to the contrary notwithstanding *And* thereupon the said trustees are hereby authorized and empowered to pay such last mentioned dividends or dividend unto the said (*D.*) his executors administrators or assigns *And* the said trustees are authorized and empowered to pay or make such arrangements with the creditors whose debts are under £ as they the said trustees may

deem expedient *Provided also* and it is hereby declared and agreed that any resolution signed by the majority in number and value of the creditors parties hereto shall be binding on all the several parties hereto and shall be effectual for the allowance and passing of the accounts of the said trustees and for discharging them from the trusts hereof and from all claims and demands in respect thereof *And* that all questions relating to the said trust estate shall be decided according to English Bankrupt Law *And further* That the said trustees shall not be answerable for the acts or receipts of each other or for any loss or damage which may happen in the execution of the aforesaid trusts without their own respective wilful default and that whenever the funds arising from the said trust estate shall amount to £ or upwards the same shall be paid to Messrs.

No. CCC.

Short Assignment in Trust for Creditors.

Trustees not to be answerable.

& Co. bankers in the names of the said trustees and the cheques or orders for drawing out the said money or any part thereof shall be signed by two at least of the said trustees *And this Indenture lastly witnesseth* That in consideration of the premises and of the assignment hereinbefore contained the said several creditors parties hereto of the second and third parts subject to the proviso next hereinafter contained *Do* and each of them *doth* acquit release and for ever discharge the said (*D.*) of and from all and all manner of debt and debts sum and sums of money bills bonds notes accounts reckonings judgments executions actions suits claims and demands whatsoever which they the said releasing parties or any or either of them their or any or either of their partner or partners now have or hereafter may have against the said (*D.*) his executors or administrators for or in respect of any debt transaction matter or thing up to the day of the date hereof *Provided always* and it is hereby expressly declared and agreed that the said release or releases to the said (*D.*) shall not extend or be deemed or construed to extend to any bill or bills of exchange or other security or securities which the said creditors or any of them now hold for securing their respective debts from the said (*D.*) jointly with any other person or persons whomsoever but that such release and releases respectively shall merely extend to the said (*D.*) and not to any other person or persons and that such bill or bills of exchange security or securities shall remain valid and effectual in the law anything herein contained to the contrary notwithstanding *Provided also* and it is hereby expressly declared and agreed that in case the said (*D.*) hath concealed or kept back any part of his estate and effects

Release by creditors.

Remedy against sureties preserved.

Release to be void in certain cases.

No. CCC.
*Short Assign-
ment in Trust
for Creditors.*

to the value of twenty pounds (except the linen and wearing apparel of himself and his wife and family) then the release hereinbefore contained shall be void and of no effect *In witness* whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

The Schedule above referred to.

Creditors' Signatures.	Seals.	Amount of Debt.		

CONDITIONS.

1. *Definition of a Condition.*
2. *Conditions precedent.*
Conditions subsequent.
3. *Conditions by Deed.*
4. *Operative Words.*



Definition.	SECT. 1. A condition is a quality annexed to an estate, right or interest, by which the same is created, enlarged or defeated upon the happening of an uncertain event, Shepp. Touch. 117.
Conditions precedent.	2. Conditions are either precedent or subsequent. Where the condition must be performed before the estate can commence, it is a condition precedent; as if an estate be limited to A. upon condition that he marry B., the marriage is a condition precedent, and until that happens, no estate vests in A.; but where the effect of a condition is to defeat an estate already commenced, it is a condition subsequent; as where a lease is made on condition that the lessee shall pay to the lessor on such a day a certain sum,—here the condition is subsequent, and following the estate, and the performance thereof continues and preserves the same.
Conditions by deed.	3. An express condition cannot be annexed to an estate but by deed. For the most part, conditions are either inserted in or indorsed upon the instrument creating the estate or interest. But where the terms are inserted in a separate instrument, it is called a defeasance, see DEFEASANCES.
Operative words.	4. The most apt words wherewith to make a condition in a deed are, “provided always,” “nevertheless,” “and these presents are upon this express condition, &c. that if, &c. ;” but other words will

have the same effect, as "proviso," "it is provided and agreed," &c., Shepp. Touch. 117. As to the form of a condition in bonds, see BONDS, *ante*, p. 496, pl. 8; and as to the distinction between a condition and a covenant, see *post*, COVENANTS.

Conditions.

Conditions in Deeds—see INDEX TO PRECEDENTS.

CONDITIONS OF SALE.

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| <ol style="list-style-type: none"> 1. <i>Particulars and Conditions of Sale the Basis of the Contract.</i> 2. <i>Evidence of the Contract. Sale of Real Property. Sale of Goods.</i> 3. <i>Accuracy of the Conditions.</i> 4. <i>Construction of the Conditions. Meaning of the word "Rent." Object of Special Conditions. Compensation Clause. No Protection against Fraud. In case of unintentional Errors. Compensation in Equity. Construed in favour of Purchaser.</i> 5. <i>Waiver of Conditions, &c.</i> 6. <i>What Stipulations ought to be inserted in the Conditions.</i> 7. <i>Condition as to Biddings. Biddings for Seller.</i> 8. <i>Conditions as to Title. As to Title Deeds. As to production of Lessor's Title. Sale of Leaseholds held under one Lease in Lots.</i> | <ol style="list-style-type: none"> <i>Purchaser of Leaseholds bound by Covenants in Lease, when. Sale of an Underlease. Purchaser of Freehold bound to indemnify against Covenant.</i> 9. <i>As to Time of making out Title and completing Contract. Time of the Essence of the Contract. Months in the Computation to be Lunar or Calendar. Rule in Equity as to Time.</i> 10. <i>As to Title under an Exchange.</i> 11. <i>Condition as to Conveyances.</i> 12. <i>Condition as to Timber.</i> 13. <i>Condition as to Fixtures.</i> 14. <i>Condition as to Forfeiture of Deposit and Resale.</i> 15. <i>Provision for Payment of Interest on Purchase-money if completion of Purchase be delayed.</i> 16. <i>Conditions on Sales by Trustees or Mortgagees. Preparation of.</i> |
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SECT. 1. Particulars of sale, together with the conditions of sale, form the basis of the contract for a sale by auction; the former describing the property that is to be sold, and the latter the terms on which it is to be sold. The terms of a contract for a sale by auction are in many respects the same as when the sale is by private contract, see AGREEMENTS (*ante*, pp. 156—173), but there are some additional matters to be considered that are peculiar to that mode of sale.

Particulars and conditions of sale the basis of the contract

Conditions of Sale.

Evidence of the contract.

Sale of real property.

Sale of goods.

Accuracy of the conditions.

Construction of the conditions.

2. On sales of real property the conditions are usually made part of the contract by an agreement in writing duly signed by the purchaser or his agent; but in order to make the conditions evidence of the contract within the Statute of Frauds, it is necessary that there should be a reference to them: an entry therefore by an auctioneer, not referring to the conditions or particulars of sale, will not be sufficient, *Ramsbottom v. Tunbridge*, 2 M. & S. 434. See *ante*, AUCTIONS, pp. 433—445.

On the sale of goods, the conditions of sale annexed to the catalogue will evidence the terms of the contract; but they must be annexed or plainly referred to, or they will not be a sufficient memorandum to satisfy the 17th section of the Statute of Frauds, *Kenworthy v. Schofield*, 2 B. & C. 945; and the bare reading the conditions before the sale will not supply the defect, *ib.*; but the pasting up the conditions of sale on the auctioneer's box, as is usually done, has been held to be a sufficient notice to the buyer, *Mesnard v. Aldridge*, 3 Esp. 271.

3. Accuracy is as necessary in framing the conditions as in drawing up the particulars of sale; for when they are reduced into writing, they cannot be varied or explained by any verbal declaration made by the auctioneer at the time of the sale; not even where a party has agreed to be bound by the conditions and such declarations made at the sale, *Higginson v. Clowes*, 15 Ves. 505; and this rule prevails in equity as at law, *Jenkinson v. Pepys*, cited 6 Ves. 330; *Buckmaster v. Harrop*, 13 Ves. 471; as well in favour of the seller as the buyer, *Powell v. Edmunds*, 12 East, 6; and to a sub-sale as to an original sale, as where A. bought at a sale, after a verbal explanation given at the time, and then resold to B., who heard the explanation, this was held to be no more binding on B. than A., and therefore A. could not enforce the contract against B., *Shelton v. Livius*, 2 Cr. & J. 411; *S. C.* 2 Tyr. 420; but it seems that if a purchaser had notice of a mistake before the sale, such notice might be given in evidence against him, *Gunnis v. Erhart*, 1 H. Bl. 289; *Ogilvie v. Foljambe*, 3 Mer. 53; so it may be proved that the purchaser perused the original lease before the sale, *Bradshaw v. Bennett*, 5 C. & P. 48; and the particulars and conditions may be altered before the sale, *Fife v. Clayton*, 13 Ves. 546. Fraud, mistake or surprise are respectively grounds for receiving parol evidence in defence to a bill for specific performance, but where none of these circumstances exist evidence cannot be offered to contradict, explain or vary the written contract, *Manser v. Back*, 6 Hare, 443.

4. It is said that the judges, in construing conditions of sale, will endeavour to collect the meaning of the parties without incumbering themselves with the technical meaning of words; as where the City of London let an estate by auction, and by one of the conditions it was stipulated that the purchaser should pay a certain rent before the

lease was granted; this word "rent," though properly applying only where the relation of landlord and tenant had commenced, was held to be a sum of money which should be paid, *City of London v. Dias*, Woodfall's L. & T. by Harrison and Wollaston, 301, 4th ed.

Conditions of Sale.
Meaning of the word "rent."

The province of a special condition is to make known to the purchaser that he will not get that which but for the condition he would be entitled to. A purchaser must take subject to that which is peculiar to and necessarily incident to the estate. Thus where a contract is entered into to sell a freehold, and nothing is said about the minerals, if the purchaser finds that the minerals are reserved, the title is bad, and he cannot be compelled to take it. But if, on a sale of copyholds, nothing is said as to minerals, a purchaser cannot object that the title is bad, because he cannot touch the minerals except with the consent of the lord of the manor, *Hayford v. Criddle*, 22 Beav. 480. See *Le Grand v. Whitehead*, 1 Russ. 309; *Crosse v. Lawrence*, 9 Hare, 462; 16 Jur. 142; 21 L. J., Chan. 889.

Object of special conditions.

The court has sometimes difficulty in dealing with special conditions of sale. On the one hand it was hard to say that parties should not enter into contracts suited to their convenience and to the exigency of their titles, but, on the other hand, conditions of sale were sometimes of such a nature that it was scarcely practicable to carry them into execution, consistently with the settled principles of courts of equity, *Hyde v. Dallaway*, 4 Beav. 608.

The most important stipulation in conditions of sale is that by which vendors endeavour to protect themselves against any misdescription, declaring that it shall not annul the sale, but that compensation shall be given,—a clause which is, however, no protection against fraudulent errors, *Norfolk (Duke) v. Worthy*, 1 Campb. 337; and so on a sale of goods, where a ship was sold "with all faults," the vendor was held bound to disclose a latent defect, known to himself, which it was impossible for the purchaser to discover, *Mellish v. Motteux*, 1 Peake, 115; recognized in *Schneider v. Heath*, 3 Campb. 506; but it has since been decided that if the vendor used no means to conceal the defect, he might avail himself of the stipulation, *Baglehole v. Walters*, 3 Campb. 154. Where the error is unintentional, there appears to be "no definite rule to be drawn from the decided cases which should determine what misstatement or misdescription in the particulars should justify a rescinding the contract, and what should be the ground of compensation only," *per* Tindal, C. J., *Flight v. Booth*, 1 Bing. N. C. 370; *S. C.* 1 Scott, 190. In *Wright v. Wilson*, 1 Mood. & Rob. 207, it was held that, in the absence of fraud, however gross the negligence of the vendors, the purchaser must be bound by having bought an estate without looking at it; and in *Milts v. Oddy*, 6 C. & P. 728, where the description materially affected the value, it was held that, unless the jury thought the mis-

Compensation clause.

No protection against fraud.

In case of unintentional errors.

*Conditions of
Sale.*

description was wilful, a purchaser was not at liberty to rescind the contract. The better opinion, however, appears to be, "that where there is a pure mistake not prejudicing the purchaser, it is cured by the condition," *per* Best, C. J., *Leach v. Mullett*, 3 C. & P. 115. But where the misdescription is so material as not to be a subject of compensation, the purchaser shall be at liberty to rescind the contract altogether, as where the description was of other property than that intended to be sold, *Robinson v. Musgrove*, 2 Mood. & Rob. 92: so where, on the sale of a lease, part of the property described, which was an essential part, was not included in the lease, but was held from year to year, *Dobell v. Hutchinson*, 3 Ad. & Ell. 355: so where a lease described as containing a restriction against carrying on any offensive trades, contained also a restriction against carrying on some trades not commonly included under the term "offensive trades," *Flight v. Booth*, *ubi sup.*: so where, from the nature of the case, there can be no estimate made of the diminution of the value, *Sherwood v. Robins*, 1 Mood. & Malk. 194; *S. C.* 3 C. & P. 339; and in one case, where on the sale of a manor by trustees the fines were described as arbitrary, which were so on alienation only, this was held not to be such a description as entitled the purchaser to any compensation, *White v. Cuddon*, 6 Jur. 471, H. L. As to the condition about misdescriptions, see *ante*, pp. 442—444; Sugd. V. & P. Ch. I. Sect. 3.

Compensation
in equity.

A court of equity will enforce a sale with a compensation for a slight unintentional error, although there be no such condition; and will not assist the seller where there is such a condition, if the misdescription is of importance; therefore the bare omission to enumerate the taxes which the tenant had to pay was held not to entitle the purchaser to compensation, *Townsend (Lord) v. Granger*, cited 2 Sim. 436; on the other hand, where a house was described as a "brick-built dwelling-house," which proved to be built partly of brick and partly of timber, and some parts of the exterior were only lath and plaster,—the court held this not to be a subject for compensation, *Powell v. Double*, MS., cited 1 Sugd. V. & P. 52, 10th ed., 30, 11th ed. And in an earlier case, where a lease at rack-rent was described as a lease at a ground-rent, the court refused to decree a specific performance, holding the doctrine of compensation not to be applicable to cases of that description, *Stewart v. Alliston*, 1 Mer. 26.

Construed in
favour of pur-
chaser.

And it seems to be now settled that a court of equity will construe conditions of sale strictly in favour of a purchaser; and if a vendor wishes to preclude him from evidence which, under ordinary circumstances, he would be entitled to as a matter of common right, he must express himself in terms most clear and unambiguous, *Symons v. James*, 6 Jur. 452, V. C. K. B. *Osborne v. Harvey*, 7 Jur. 229. Whenever a purchaser is to be limited as to his rights respecting the title by some special condition, that condition ought to be expressed

in such language as to show distinctly to what extent he is to be affected, *Cruse v. Nowell*, 25 Law J., Ch. 709. *Per K., V. C.* *Conditions of Sale.*

A vendor has duties inseparable from that character which he is bound to perform and cannot avoid by restrictive conditions of sale. A vendor is not justified in rescinding a contract under a restrictive condition of sale, reserving that power where he has not answered the purchaser's requisitions or made an attempt to answer the objections to the title, *Greaves v. Wilson*, 27 Law J., Ch. 546. See *Page v. Adam*, 4 Beav. 269, *post*, p. 649, n. Special conditions of sale are construed most strictly against the vendor, *Hoy v. Smythe*, 22 Beav. 510; 2 Jur., N. S. 1011.

5. Where there is an agreement for the sale of real property, with a stipulation that if the residue of the purchase-money is not paid by a certain day, the agreement should be void, and the vendors shall have power to resell, it was held that the money not being paid, and the purchaser continuing in possession and giving a warrant of attorney to confess judgment, was a waiver of the stipulation, *Ex parte Gardner in re Eastern Counties Railway Company*, 4 Y. & C. 503. So a parol waiver of a written agreement relating to an interest in land is void, as being in contravention of the Statute of Frauds, *Stowell v. Robinson*, 5 Scott, 296; so a purchaser, after long possession, was held to have waived his right to an investigation of the title, *Hall v. Laver*, 3 Y. & C. 291. Waiver of conditions, &c.

6. Much discretion is called for in the framing conditions of sale according to the nature of the property to be sold, so that they should contain all necessary stipulations as to biddings, rescinding the contract, title, taking timber at a valuation, fixtures, and deposit—all of which have been more or less the subject of judicial decision. What stipulations ought to be inserted in the conditions.

7. It is a usual stipulation that "No bidding once made shall be retracted," it having been decided that the bidder at an auction might countermand his bidding at any time before the lot was actually knocked down, *Payne v. Cave*, 3 T. R. 148; *Routledge v. Grant*, 4 Bing. 653; *ante*, p. 435. As to goods, see *Phillips v. Bistolli*, 3 Dowl. & Ry. 822. Condition as to biddings not to be retracted.

As all puffing at auctions is illegal, and the right of any bidding being made on behalf of the seller has been much questioned, unless notice of it be previously given, the only prudent course, where the seller finds it necessary to protect himself in that way, is to make it a condition of the sale that the purchaser shall be at liberty to bid once. See *ante*, pp. 435, 439. Biddings for seller.

8. In the absence of stipulation, the vendor is bound to make a good title to the property sold; but particular stipulations are notwithstanding necessary. First, as to the title deeds. Where the seller wishes to protect himself against the production of deeds not in his possession, he must do so in explicit terms; therefore, where the con- Conditions as to title.
Title deeds.

*Conditions of
Sale.*

dition was, "that he should not be bound to produce any original deed or other documents than those in his possession, and set forth in the abstract," this was held not to restrict his liability to produce them for the purpose of making out the title, *Southby v. Hutt*, 2 My. & Cr. 207, *ante*, p. 5: so as to the expenses of searches, attested copies, and other matters connected with the making out the title, special provision ought to be made where it is not intended that they should fall on the vendor, *Dare v. Tucker*, 6 Ves. 460; recognized in *Boughton v. Jewel*, 15 Ves. 176.

Production of
lessor's title.

In the case of leaseholds, the vendor will be bound to produce the title of his lessor, unless it be expressly stipulated to the contrary in the conditions; and an auctioneer omitting to make it a part of his conditions cannot recover his commission, *Denew v. Daverell*, 3 Campb. 451; but this stipulation, as it seems, will not prevent the purchaser from looking into the lease, if he can get access to it, and proving it to be defective, so as to vacate the contract, *Shepherd v. Keatley*, 1 Cr. M. & R. 117; *S. C.* 4 Tyr. 571, overruling *Spratt v. Jeffrey*, 10 B. & C. 249; and see *Souter v. Drake*, 5 B. & Ad. 992. See *ante*, pp. 3—5, 20.

A purchaser of a bishop's lease cannot call for the lessor's title, *Fane v. Spencer*, 2 Madd. 438; 2 Mer. 430 n; and the same principle is applied in practice to the lease of any other corporation which demises by virtue of the disabling statutes, and although the rule does not apply to a lease under a corporation unaffected by the disabling statutes, *Purvis v. Rayer*, 9 Price, 488, it is not ordinarily the practice to require in such cases the production of the title of any corporation, 1 Davidson's Conv. 478, 2nd ed.

Sale of lease-
holds held
under one lease
in lots.

Many inconveniences arise from the purchase of the leasehold interest of one of several houses held under the same lease; for if the lease, as is to be expected, contains covenants affecting the whole, and there be a proviso, that on breach of any covenant the landlord is to have a right to re-enter, it is evident that the purchaser of one lot may be evicted without any default of his own, but solely of another person. It is certainly a very inconvenient state of circumstances; and the question, whether a purchaser is to be compelled to complete his purchase, depends on the nature of the contract, what he agreed to buy and under what circumstances. On the sale of leaseholds in lots, it is generally necessary to make some provision for securing to each purchaser the due payment of the entire rent and the performance of the covenants in the original lease. In some cases, cross powers of distress and entry are given to the several purchasers over each other's lots, with a covenant from each purchaser to pay his proportion of the rent and to observe the covenants, see *ante*, pp. 288—291. In some cases, the original lease is assigned to the purchaser of the largest lot in value, who grants underleases of the other lots to the respective purchasers.

A leasehold estate, consisting of two houses, held under the same lease and subject to a ground rent of 8*l.*, was advertised to be sold in two lots; the particulars of sale stating the fact, that they were held under one lease and that the ground rent was to be equally apportioned. And by the eighth condition of sale it was stipulated, that if the lots should be bought by different persons, they should enter into mutual covenants to indemnify each other against more than the apportioned share of the ground rent. Nothing was said as to the special covenants contained in the lease, but the lease was inspected by the solicitor of the purchaser of Lot 2 at the sale; it was held, that the purchaser of Lot 2 could not object to perform the contract, on the ground that he was liable to eviction by reason of a breach of covenant by the purchaser of Lot 1 with respect to the special covenants, as to which no provision was made in the conditions of sale, *Paterson v. Long*, 7 Jur. 1049; 6 Beav. 590.

Conditions of Sale.

A purchaser of leaseholds has notice of what it is he purports to buy, and he will be bound by all the covenants in the lease; but one who contracts for a lease from a party with knowledge that he holds under a leasehold title, has notice of ordinary but not of unusual covenants in the original lease. Covenants in restraint of trade in a trading locality are not considered usual covenants, *Wilbraham v. Livesey*, 18 Beav. 206; *Flight v. Barton*, 3 My. & K. 282. But a purchaser who enters and takes possession of the property will be bound even by unusual covenants, as where the original lease containing unusual covenants was produced to his solicitor for inspection before the contract who did or might have inspected them, the purchaser was held to have purchased with notice of such covenants, *Cosser v. Collinge*, 3 My. & K. 283.

Purchaser of leaseholds bound by covenants in lease, when.

On the purchase of an underlease, it is not a valid objection to the title that the underlease may become forfeited by the non-performance of the covenants in the original lease, for such liability is incidental to every underlease, and which must be known to the purchaser. A contract to assign a lease is not satisfied by granting or assigning an underlease, *Hayford v. Criddle*, 22 Beav. 477. Where the property offered for sale is held by an underlease, that fact should appear in the particulars or in the conditions of sale. Where property was sold as a lease for ninety-nine years, which was afterwards discovered to be held by an underlease for a term of ninety-nine years wanting three days, the court refused a specific performance, *Madeley v. Booth*, 2 De G. & Sm. 718. See *Darlington v. Hamilton*, 1 Kay, 550.

Sale of an underlease.

A. paid a deposit upon a contract for the purchase of the lease, &c. of a public-house. It being afterwards discovered that the house was comprised with another in an original lease, under which the lessor had a right to re-enter for a breach of covenants in respect of either house; it was held, that A. was not bound to accept the title with an

Conditions of Sale.

indemnity, but might recover back the deposit with the expenses incurred in investigating the title, *Blake v. Phim*, 3 C. B. 976. See *Law v. Urlwin*, 16 Sim. 377.

Leasehold property was sold subject to a condition that possession under the lease should be deemed conclusive evidence of the due performance or sufficient waiver of any breach of the covenants in the lease up to the completion of the sale. A covenant to keep the premises insured was broken on two occasions, one before and one subsequently to the sale; it was held, that the condition precluded any objection, on the ground of the former breach of covenant but not of the latter, and that the purchaser was not bound to take the title, *Howell v. Kightley*, 21 Beav. 331; 2 Jur., N. S. 455; 22 L. J., Ch. 868.

Purchaser of freehold bound to indemnify against covenant.

A vendor of freehold property, who, on his own purchase of it, had entered into a covenant to observe the covenants entered into with a former vendor, and which prohibited building on the land, put it up for sale, pursuant to particulars and conditions, noticing the existence of the covenant, but not stipulating that the purchaser should enter into any covenant on the subject. On a bill for specific performance filed by the purchaser; it was held, that the purchaser was not entitled to a conveyance, unless on the terms of giving or providing for the vendor a sufficient indemnity against any breach of the covenant on the part of the purchaser, his heirs, appointees, or assigns, *Moxhay v. Inderwick*, 1 De G. & Sm. 708. It was held, also, that a covenant on the part of the purchaser, his heirs, executors, administrators, appointees, and assigns, with the vendor, his heirs, executors, and administrators, to the same effect, *mutatis mutandis*, as the covenant entered into by the vendor on his own purchase, ought to be considered as a sufficient indemnity, *Ib*.

Time of making out title and completing contract.

Time of the essence of the contract.

9. At law the time of making out the title is deemed of the essence of the contract; therefore, on the sale of real property, the vendor must be prepared to make out a good title on the day when a purchase is to be completed, *Cornish v. Rowley*, cited Selw. N. P. 10th ed.; but in an action by a purchaser against a vendor for not making out a good title, where it was shown that no time was fixed for that purpose, it was held, that it should have been alleged in the declaration that a reasonable time had been allowed to the vendor, *Sansom v. Rhodes*, 6 Bing. N. C. 261. On the sale of goods, if the buyer neglect to remove the goods within a reasonable time, the seller may either charge him with warehouse rent or bring an action for the special damage, *Greaves v. Ashlin*, 3 Campb. 426; see also *Mertens v. Adcock*, 4 Esp. 251; so where the time is fixed in the conditions for the removal of the goods by the buyer, this stipulation is held to be made for the buyer, and therefore the seller must always be ready to deliver the goods on demand, *Hagedon or Haydorne v. Laing*, 6

Taunt. 162; *S. C.* 1 Marsh. 514. Where, as is usual on the sale of real property, the time for delivering the abstract of title, for the return of the abstract, for delivering draft of conveyance and completing the purchase, is limited in the conditions to any certain number of months, this word "month" may mean lunar or calendar, according to the intention of the contracting parties, *Lang v. Gale*, 1 M. & S. 111; and the delivery of the draft of conveyance to the purchaser is a condition precedent, *Ib.*

Conditions of Sale.

Months in the computation to be lunar or calendar.

Though time may in equity be made of the essence of the contract, yet the strict performance of it may be waived under particular circumstances, *Hudson v. Bartram*, 3 Madd. 495; see also *Gregson v. Riddle*, cited 7 Ves. 268; *Seton v. Slade*, 7 Ves. 265; therefore, where it was stipulated in the conditions that all objections to a title were to be taken within twenty-one days from the delivery of the abstract, or be deemed waived, and time was in that respect to be considered of the essence of the contract; it was held, that the twenty-one days did not begin to run until a perfect abstract had been delivered, *Glynn v. Bell*, 2 Beav. 17; but where time is not expressly made of the essence of the contract, and there is unnecessary delay by one of the parties, the other has a right, by notice, to limit the time for completing the contract; and upon default, to abandon the same, *Taylor v. Brown*, 2 Beav. 180.

Rule in equity as to time.

10. Conditions of sale describing a title to premises as arising under an exchange, by virtue of an award of commissioners under an Inclosure Act, are satisfied by showing a title by award in respect of other lands and of common rights, without showing the further particulars of the exchange; and if the vendor contracts to commence his title with the award, the purchaser has no right to inquire into the title of the lands given by the vendor in exchange for the lands contracted to be sold, *Cattell v. Corrall*, 4 Y. & C. 228. See *ante*, p. 17.

Title under an exchange.

11. The expense of conveyances will fall on the purchaser, unless there is an express stipulation to the contrary.

Condition as to conveyances.

12. Where timber and other trees are to be taken by the purchaser at a valuation, the conditions should particularly specify what trees shall be paid for as timber, the custom of the country making some trees timber which in their nature are not so, *Chandos (Duke) v. Talbot*, 2 P. Wms. 601; so where an estate was sold in several lots, and as to two of the lots the conditions stated that the timber was to be taken at a valuation, but the same condition was not annexed to the other lots, although there was a general condition "that all timber and timberlike trees, down to 1s. per stick inclusive, should be taken at a fair valuation;" yet the purchaser of the lots to which the condition was not annexed was held not bound to pay for the timber, *Higgenson v. Clowes*, 15 Ves. 516. See Sugd. V. & P. pp. 36, 37, 11th edit. *Lord Brooke v. Rounthwaite*, 5 Hare, 298.

Condition as to timber.

- Conditions of Sale.* 13. In the absence of stipulation, fixtures will pass with the conveyance of a freehold house, *Colegrave v. Dias Santos*, 2 B. & C. 76, and see *Hitchman v. Walton*, 4 M. & W. 409. It is usual to stipulate that the fixtures shall be taken at a valuation; and where this was omitted to be done, and the purchaser had taken possession, it was held, that the vendor could not maintain trover for them, *Colegrave v. Dias Santos*, *ub. sup.* See Sugd. V. & P. p. 37, 11th ed.
- Condition as to fixtures. 14. The usual condition, that, on default of the purchaser, the deposit shall be forfeited, and the estate resold, ought not to be omitted. By virtue of this stipulation, the vendor may resell the property, and recover the loss and charges from the purchaser, see *Mertens v. Adcock*, 4 Esp. 251, questioned in *Hagedorn v. Laing*, 6 Taunt. 514; also *Ex parte Hunter*, 6 Ves. 94. Where the condition is, that the deposit shall be forfeited as liquidated damages, this was held to apply to the breach of any particular condition; and that, where the party wrongfully abandoned the contract altogether, the vendor might recover damages *ultra* the forfeited deposit, *Icely v. Grew*, 6 Nev. & Man. 467; and where a purchaser became bankrupt after a breach of the condition, it was held, that the seller might prove the loss on a resale under the commission, *Ex parte Hunter*, 6 Ves. 94. See Sugd. V. & P. pp. 40—42, 11th ed.; *Ockenden v. Henly*, 4 Jur., N. S. 999; 27 L. J., Q. B. 361.
- Condition as to forfeiture of deposit and resale. 15. A condition that if "from any cause whatever the purchase shall not be completed on a day named, the purchaser shall pay interest on the purchase money," is inoperative where a good title has not been shown by the default of the vendor within the time stipulated; but it is operative where it is the result of accident, or of something which could not have been guarded against by the vendor, *Sherwin v. Shakspear*, 17 Beav. 267; *De Visme v. De Visme*, 1 Hall & T. 408; 1 Mac. & G. 336; *Rowley v. Adams*, 12 Beav. 476; *Robertson v. Shelton*, 12 Beav. 363. See Sugd. V. & P. Ch. XVI. s. 1.
- Provision for payment of interest on purchase money if completion be delayed. A vendor cannot take advantage of his own wrong, and, by reason of it, obtain an advantage to which he would not otherwise be entitled. If the delay in the completion of the title be the result of gross negligence, or if the difficulty in the title is such that the vendor, if he minded, might have remedied it, he shall not, by reason of his negligence, obtain a larger amount of interest from the purchaser than he would otherwise have been entitled to, *Sherwin v. Shakspear*, 17 Beav. 267.
- Conditions of sale provided that the purchase should be completed on a given day, and that if from any cause whatever the purchase should not be completed, the purchaser should pay interest from that time till the day of completion. The title was accepted and the

deeds prepared and tendered some time before the day fixed. Two days before the time the vendor died, having devised her estates to an infant, which rendered a suit necessary to obtain completion, and delay was occasioned. After filing the bill, the purchaser paid his money into court to the general credit of the cause: it was held, that the death of the vendor was an event within the contemplation of the parties, and the purchaser was liable to pay interest; that the payment into court was not a payment to the purchaser; and that there being no fault in either party, the decree must be without costs, *Bannerman v. Clark*, 3 Drew. 632; 26 L. J., Chanc. 77.

One of the conditions of an attempted sale by auction under a decree provided that the purchase should be completed on a day named, and that if, from any cause whatever, the purchase-money should not then be paid, interest should be paid from that date. The purchase was by private contract, subject to the conditions of sale, and also subject to the purchase being approved by the court. The purchase-money was a fund in court, and, after a long delay, the conveyancing counsel approved of the title for the purchasers: it was held, that neither party being to blame for the delay, the purchasers could not be relieved from their obligation to pay interest, *Stewart v. Lawson*, 3 Sm. & G. 307.

If a vendor delivers an abstract deducing a title by certain deeds, and documents specifying their titles, dates and contents, the verification of the abstract with those deeds and documents is a mere question of evidence, and the title is made out by the abstract as delivered. But where there are facts alleged in the abstract, for instance, the identity of persons or of parcels, which require evidence either oral or documentary to prove them, which evidence is not produced, the production of the evidence necessary to prove such facts constitutes a question of title, *Sherwin v. Shakspear*, 17 Beav. 275.

16. Trustees or mortgagees with trusts or powers for sale ought to impose all necessary and proper conditions, but ought not to impose any conditions which will reduce the value of the property or involve a breach of trust, *Wilkinson v. Fry*, 1 Mer. 268. But strict conditions of sale, although somewhat unusual, will not on light grounds be deemed of such a depreciatory character as to amount to a breach of trust or constitute an objection to the title, *Hobson v. Bell*, 2 Beav. 17; *Levy v. Pendergass*, 2 Beav. 415.

Conditions
on sales by
trustees or
mortgagees.

Trustees may stipulate that all objections to the title shall be taken within twenty-one days, and that if a valid objection be taken, they shall be at liberty to rescind the contract on returning the deposit, *Hobson v. Bell*, 2 Beav. 17. Where a trustee, without the power of giving receipts, stipulated that his receipt should be sufficient, and that the purchaser should not require the concurrence of the parties beneficially interested, the court decreed a specific performance, *Wilkinson v. Hartley*, 15 Beav. 183.

Conditions of Sale.

A mortgagee with power to sell, subject to special or other conditions of sale, is justified in selling under a condition, that in case any objection or requisition should be made, in respect of title or otherwise, which the vendor should be unwilling or unable to remove or satisfy, the vendors should be at liberty to rescind the sale, *Falkner v. Equitable Reversionary Interest Society*, 4 Jur., N. S. 1214, V. C. K.

Preparation of. The preparation of conditions of sale is one of the most delicate and difficult tasks imposed on the draftsman, and can only be undertaken after a careful perusal of the abstract. The preceding observations have specified most of the ordinary conditions required on the sale of property to which a perfectly good marketable title can be made, but in very many instances it will be necessary to provide by the conditions against objections which may be taken to the title by an unwilling purchaser; and at the same time great discretion is required lest the number and stringency of the conditions should alarm and deter intending purchasers. The subject of conditions of sale is fully discussed in 1 Davidson's Conv. pp. 439—541, 2nd ed., and in 9 Byth. Conv., by Sweet, pp. 12—67, and in a supplement thereto by Sweet. Numerous forms of precedents of conditions of sale are also inserted in the above works.

No. CCCI.

No. CCCI.

Lands
(*Freehold*).*Conditions of Sale of Freehold Lands.*

I. That the highest bidder shall be declared the purchaser and if any dispute shall arise as to the last or best bidder the estate shall be immediately put up again at the former bidding.

II. No person shall advance at any one bidding less than £ or retract his or her bidding And the vendor by himself or his agent shall be at liberty to bid once for the property.

III. The purchaser shall pay immediately after the sale to the auctioneer a deposit of £ per cent. in part of the purchase money and sign an agreement for the payment of the remainder on or before the day of 18 upon having a good title made to him All outgoings to be cleared to that time.

IV. That within from the day of sale the vendor shall at his own expense prepare and deliver an abstract of his title to the purchaser or his solicitor and shall deduce a good title.

V. The purchaser shall have a proper conveyance at his

No. CCCI.

Lands
(*Freehold*).

own expense on payment of the remainder of the purchase money and possession (a) will be given on completion of the purchase and the purchaser will be entitled to the rents and profits from the day of 18 but if from any cause the remainder of the purchase money shall not be paid on the day of the purchaser shall pay interest for the same (as well as for the amount at which the timber shall be valued) at the rate of £ per cent. per annum from that day to the day of payment but nevertheless this stipulation to be without prejudice to the vendor's right to insist on the performance of the last condition.

VI. The purchaser to take all timber and timberlike trees and pollards down to one shilling a stick and that inclusive of also the coppice and underwood by valuation such valuation to be made by two proper persons (one to be appointed by the vendor and the other by the purchaser) or their umpire on or before the day of 18 and the amount paid on completing the purchase of the estate.

VII. If any mistake be made in the description of the property or there be any other error in the particulars of sale the same shall not annul the sale but a compensation or equivalent shall be given or taken as the case may require according to the average of the whole purchase money (on such error or misstatement being proved) such compensation or equivalent to be settled by two referees or their umpire—one referee to be chosen by each party within ten days after notice given of the error and the umpire to be chosen by the referees immediately after their appointment.

VIII. Production of title deeds (See *post*, pp. 639, 656).

LASTLY. Upon failure of complying with the above conditions the deposit (b) shall be forfeited and the vendor shall be at full liberty (with or without notice) to resell the estate by public

(a) If it be the sale of an advowson, it will be proper to add, as a distinct condition,

“If any vacancy shall happen in the church by the death or resignation of the present incumbent before the completion of the purchase the right of nomination shall belong to the purchaser.”

If it be the sale of a reversion, add, as a distinct condition,

“In case any loss or damage shall happen by fire or otherwise to the premises or any increase in value shall accrue thereto by the decease of the tenant for life at any time before the completion of the purchase, the same shall not in anywise vacate or affect the present sale.”

(b) As to the forfeiture of the deposit, &c., see *ante*, Pref. sect. 14, p. 630.

No. CCCI.

Lands
(Freehold).

and if on such resale there should be any deficiency the purchaser shall make good such deficiency to the vendor and all expenses attending such resale the same to be recoverable as liquidated damages and it shall not be necessary previously to tender a conveyance to the purchaser.

Agreement following and referring to Conditions of Sale.

It is hereby declared and agreed by and between (*Vendor*) the vendor of the estate mentioned in the above particular and (*Purchaser*) that the said (*P.*) has become the purchaser of Lot 4 called as in the same particular described at the sum of £ And that the sum of £ has been paid down by the said (*P.*) to the said (*V.*) by way of deposit and in part of the said purchase money And that the said particulars and conditions of sale shall be taken as the terms of agreement for the said sale and purchase respectively and be observed and fulfilled by the said (*V.*) and (*P.*) respectively in all things As witness their hands this day of 18

Witness(*Vendor*)(*Purchaser*)

Or,

Memorandum that the messuages lands tenements and hereditaments in the foregoing particular mentioned and referred to having been put up to sale by public auction under the terms and conditions above mentioned A. B. of &c. became the highest bidder for the premises comprised in the first lot for the sum of £ and for the premises comprised in the fourth lot for the sum of £ Now therefore the undersigned (*Attorney*) as attorney for and on behalf of the said (*V.*) duly authorized and appointed doth hereby agree to sell and the said A. B. doth hereby agree to purchase the said first and fourth lots at the said sums &c. respectively under the terms and conditions aforesaid and at the same time the two several sums of £ and £ were paid by the said A. B. to the said (*A.*) as the deposit money for the said lots respectively *Witness* the hands of the said parties &c.

Receipt at the Foot of Conditions of Sale.

No. CCCI.

Lands
(*Freehold*).

Obs. To be signed by the auctioneer and vendor, or his agent.

Received of A. B. of &c. (being the purchaser of the hereditaments mentioned in the foregoing particulars of sale) the sum of £ as the deposit and in part of the purchase money or sum of £ for the said premises subject to the conditions of sale before stated *Witness my hand &c.*

Instead of the foregoing Agreements, the more common practice is to add the following.

Memorandum. I A. B. of &c. do hereby acknowledge to have this day become the purchaser of Lot described in the within [*or foregoing*] particulars of sale at and for the sum of £ and having paid into the hands of the auctioneer as stakeholder the sum of £ as a deposit and in part payment of the said purchase money I hereby agree to pay the remainder of the said purchase money and complete the said purchase according to the aforesaid conditions.

(*Purchaser*).

As agent for the vendor I ratify this sale }
and acknowledge the receipt of the said } (*Auctioneer*).
deposit of £ }

Memorandum of Sale by Private Contract of Property unsold at the Auction.

I A. B. of &c. hereby acknowledge that I have this day of purchased subject to the foregoing conditions so far as the same are applicable to a sale by private contract the property described in the foregoing particulars of sale [*or "Lot of the property described in the foregoing particulars of sale"*] at the price of £ and that I have paid the sum of £ by way of deposit and in part payment of the said purchase money to and I hereby agree to pay the remainder of the said purchase money and to complete the said purchase ac-

No. CCCI. cording to the aforesaid conditions so far as the same are
Lands.
(Freehold). applicable to a sale by private contract.

(*Purchaser*).

As agent for the vendor I ratify this sale }
 and acknowledge the receipt of the said } (*Vendor's agent*).
 deposit of £

No. CCCII.

No. CCCII.
Freeholds and
Leaseholds.

Conditions of Sale of Freeholds and Leaseholds in Lots.

I. The highest bidder for each lot shall be the purchaser thereof and if any dispute shall arise between two or more bidders the lot in dispute shall be immediately put up again.

II. No person shall advance less at each bidding than the sum to be named by the auctioneer on the day and at the place of sale and no bidding shall be retracted.

Deposit, rents
 and interest.

III. The purchaser of each lot shall immediately after the sale give in his or her name and place of abode and shall pay into the hands of the auctioneers a deposit of 20*l.* per cent. in part of his or her purchase money and sign an agreement to pay the remainder thereof on the day of next, at the office of (the vendor's solicitor) No. Street in the county of Middlesex when and where the several purchases are to be completed and upon payment thereof the purchaser of Lot 4 shall be entitled to the possession of that lot from the said 6th day of July and the purchaser of Lot 1 shall be entitled to the rents and profits of that lot as from the 24th day of June 185 up to which time all outgoings payable by the vendors in respect of Lots 1 and 4 shall be cleared or allowed by them and the purchaser or purchasers of Lots 2 and 3 shall from the 29th day of September next be entitled to the possession or to the rents and profits of those lots respectively but if from any cause whatever the purchase of any lot shall not be completed on or before the said 6th day of July next the purchaser of such lot shall pay to the vendors interest at the rate of 5*l.* per cent. per annum on the unpaid balance of the purchase money from that day until the purchase shall be completed notwithstanding the purchase money or any part thereof may have been lying unemployed and notice thereof may have been given to the vendors or their solicitor but this

provision is not to prevent the vendors from requiring the completion on the said 6th day of July next or as soon after as may be or to prevent them from exercising their rights under the last condition.

No. CCCII.

*Freeholds and
Leaseholds.*

IV. The title to Lot 1 shall commence with the indenture of lease dated the 10th day of August 1818 under which the premises comprised in that lot are held and the purchaser of that lot shall not require the lessor's title to be deduced and the production of the receipt for the last quarter's rent shall be taken and received by the purchaser as conclusive evidence that all the covenants and conditions contained in the lease have been duly observed and performed or of a waiver of all breaches of covenant if any up to the day of the completion of the purchase and the purchaser shall be deemed to have purchased with full knowledge of the contents of the indenture of lease which or a copy thereof may be inspected for seven days previous to the day of sale between the hours of ten o'clock in the forenoon and twelve o'clock at noon at the office of the said No. Street aforesaid and also in the sale room on the day of sale The title to Lots 2 and 3 shall commence with the will dated the 12th September 1812 of a testator who died in the month of October following And the title to Lot 4 shall commence with indentures of lease and appointment and release dated the 9th and 10th October 1813 whereby the premises comprised in that lot and other premises were appointed to a purchaser in pursuance of a power And the purchaser or purchasers of the said Lots 2 3 and 4 respectively shall not require the earlier titles to those lots to be deduced or require any evidence of the seisin of the said testator of the said Lots 2 and 3 or require the production of or any copy or abstract of or extract from the deed or deeds by which the said power of appointment as to Lot 4 was created or of any deeds or instruments recited or mentioned in the said indentures of the 9th and 10th October 1813 with which the title to the said Lot 4 is to commence as aforesaid or of any deeds or instruments thereby covenanted to be produced or any evidence or information as to the present custody of the prior title deeds relating to Lot 4 or the person or persons now liable to produce the same or make any objection or requisition founded on or relating to the recitals or statements contained in any of the instruments with which the said titles are to commence as aforesaid And the purchaser of Lots 2 and 3 shall not require

Commence-
ment of title to
several lots.

No. CCCII.

*Freeholds and
Leaseholds.*Delivery of
abstract and
objections to
title.

any evidence of the redemption of the land tax in respect of those lots.

V. The vendors shall within seven days after the day of sale deliver to each purchaser or his or her solicitor on application for the same at the said office of the said Mr. an abstract of the title to the lot or lots purchased by him or her and each purchaser shall within ten days after the delivery of the abstract leave at the said office of the said Mr. a statement in writing of all objections and requisitions (if any) in respect to the lot or lots purchased by him or her and in default thereof shall be considered to have absolutely accepted the title and all objections and requisitions not stated made and left within that time shall be considered as waived and any answer to any original or subsequent statement of objections or requisitions as to the title shall within seven days after the delivery of such answer be replied to by a statement in writing and any such answer not so replied to within such time shall be considered satisfactory and time shall in all respects be deemed as of the essence of this condition and in case any purchaser shall in any original or subsequent statement of objections or requisitions make take or insist on any objection or requisition as to or concerning the title to the lot or lots purchased by him or her and which he or she shall be entitled to make under these conditions or as to the conveyance surrender or other assurance, which objection or requisition the vendors shall be unable or unwilling to remove or comply with they shall be at full liberty (notwithstanding they may have delivered any further or amended abstract or abstracts or endeavoured to remove or comply with such objection or requisition or may have continued to treat with the purchaser by whom or for whom such objection or requisition shall be made) by any writing under their hands or the hand of their solicitor to annul and put an end to the contract altogether with respect to such lot or lots upon returning or tendering to the purchaser thereof the deposit money paid by him or her without interest in full satisfaction of all damages costs charges and expenses which such purchaser may sustain and the purchaser shall be precluded from all further claim.

What to be
deemed evi-
dence.

VI. All recitals and statements of deeds and other documents descents deaths of parties heirships pedigrees intestacies and other facts stated mentioned referred to or implied in any deed or document to be abstracted shall be accepted as

conclusive evidence of the contents purport and due execution of the deeds and documents and of the truth of the facts and matters therein stated mentioned referred to or implied and the vendors shall not be required to furnish any other evidence of the identity of the property offered for sale with the property described in the several documents of title than is afforded by such documents.

No. CCCII.
*Freeholds and
Leaseholds.*

VII. Each purchaser shall bear the expense of and attending the comparison and examination of the abstract with all deeds wills and other documents not in the vendor's possession including the expense of all journeys which may be necessary for the purpose and shall also bear the expense of all attested official or other copies of or extracts from any deeds wills or other documents copies of or extracts from which may be required by him or her and of all certificates or copies of or extracts from parochial or other registers statutory declarations and all other evidence whatsoever which shall be required by him or her whether for verifying the abstract or for any other purpose and no purchaser shall require the delivery of any probates of wills grants of administration or other documents of record or any covenant for the production thereof.

Expenses to be
borne by
purchasers.

VIII. The title deeds relating to Lot 1 affect that lot exclusively and will be delivered to the purchaser thereof Lots 2 3 and 4 together with other premises are subject to a mortgage the mortgagee whereof will concur in the conveyance of them to the purchaser or purchasers thereof respectively The title deeds relating to those lots will be retained by the vendors beneficially interested under the will of the testator through whom they immediately claim in case the produce of the present sale shall be sufficient to discharge the mortgage but the same will be retained by the mortgagee in case the produce of the sale shall not be sufficient for the purpose and in either case the vendors beneficially interested as aforesaid will if required at the expense of the purchaser or purchasers of Lots 2 3 and 4 respectively enter into the usual covenant with him her or them for the production of such title deeds the covenant by the vendors to be restricted to the time of their possession of the said title deeds but in case the same shall be retained by the mortgagee such covenant shall be expressly subject to his right to retain the same as such mortgagee and the purchaser or purchasers shall not object to such covenant on the ground that the title deeds and documents shall

Provision as to
title deeds.

- No. CCCII. *Freeholds and Leaseholds.* not be in the possession of the covenantors but shall be allowed to remain in the possession of the mortgagee or on the ground that such covenant may not run with the land or require that the legal estate in the premises should be vested in the covenantors previously to the execution of the conveyance to the purchaser or purchasers or make any other objection or requisition to or in relation to such covenant and the mortgagee shall not be required to enter into any covenants except the usual covenant that he has not incumbered The purchaser of Lot 1 shall take an assignment of the premises comprised therein from the surviving executor of the testator and shall not require any other covenant from him than the usual covenant that he has not incumbered and shall not require any other party to join in the assignment.
- Only covenant against incumbrances to be required. IX. The purchaser or purchasers shall not require the assignment of any outstanding term unless the same and the obtaining letters of administration for vesting such term in any person or persons and the deducing proving and making out and verifying the title thereto shall be at the sole expense in all things of the purchaser requiring the same, but the completion of the purchase shall not be delayed on that account.
- Outstanding terms. X. Upon payment of the remainder of the purchase money at the time and place above mentioned the several lots shall at the expense of the purchaser or purchasers thereof respectively be conveyed assigned surrendered and assured to them respectively such purchaser or purchasers to prepare the conveyances assignments surrenders and assurances to them respectively and leave the same at the office of the said Mr. on or before the 1st day of July next for execution.
- Conveyances to purchasers. XI. The quantities of land and the description and extent of the several lots as stated in the particulars are believed to be and shall be taken to be correct without equivalent or compensation on either side whether the same be more or less but if any error mistake or misstatement in any other respect shall appear to have been made in the particulars of sale such error mistake or misstatement shall not annul the sale but compensation or allowance shall be made by the purchaser or vendors as the case may require such compensation or allowance to be settled by two referees or their umpire in manner following (that is to say) each party shall within fourteen days after notice of the error mistake or misstatement shall have been given appoint one referee by writing and the referees so appointed shall before they enter upon the matter of reference
- Errors in particulars.

appoint an umpire by writing and the decision of such referees if they agree or of such umpire if they should disagree shall be final And in case either party shall neglect or refuse to appoint a referee within the time aforesaid the referee appointed by the other party shall make a final decision alone.

No. CCCII.
*Freeholds and
Leaseholds.*

XII. If any purchaser shall fail to comply with the above conditions or any of them his or her purchase money shall be absolutely forfeited and the vendors shall be at liberty either with or without notice to resell the lot sold to such purchaser either by public auction or private contract and the deficiency (if any) arising on such second sale together with all the expenses of and attending the same shall be made good by the defaulter at this present sale as and for liquidated damages And it shall not be necessary for the vendors previously to tender any conveyance to the purchaser but this condition is not to prevent the vendors from enforcing the completion of the original purchase in case they shall think proper so to do.

Non-com-
pliance with
conditions.

Memorandum &c. See *ante*, p. 635.



No. CCCIII.

Conditions of Sale of a Copyhold Estate.

No. CCCIII.
*Lands
(Copyholds).*

I. The highest bidder to be purchaser, see *ante*, *General Form*, Art. I.

II. Advance on biddings, see *ante*, *General Form*, Art. II.

III. Paying deposit and signing agreement, see *ante*, *General Form*, Art. III.

IV. Delivery of abstract, see *ante*, *General Form*, Art. IV.

V. On payment of the remainder of the purchase money the purchaser shall have a proper surrender and the property shall be surrendered according to the custom of the manor the vendor executing the usual covenant for title on the sale of copyhold estates of inheritance which surrender and deed of covenants shall be prepared by and at the expense of the purchaser.

VI. If the purchaser shall require the abstract to be certified by the steward of the manor or to be examined with the court rolls such certificate and examination shall be obtained and made by and at the expense of the purchaser.

VII. All fines whether arbitrary or certain payable on the sur-

No. CCCIII. render of the vendor or the admission of the purchaser shall be paid by the purchaser.

Lands
(*Copyholds*).

VIII. IX. X. Condition as to timber compensation and forfeiture of deposit, see *ante*, *General Form*, p. 633.



No. CCCIV.

No. CCCIV.

Lands
(*Leaseholds*).

Conditions of Sale of a Leasehold Estate.

I. and II.—See Arts. I. and II. *General Form*.

III. That the purchaser shall pay down immediately into the hands of Mr. a deposit of 20*l.* per cent. in part of the purchase money and sign &c. but in case any delay from any cause whatever should arise to prevent the completion of the contract on or before the said day of then the purchaser is to pay interest &c. but nevertheless this stipulation to be without prejudice &c. See Art. III. *General Form*.

IV. The purchaser to have a proper assignment of the lease at his own expense on payment of the remainder of the purchase money and possession will be given on completing the purchase but the purchaser shall not require any other title than the leases (*a*) and assignments thereof with all usual covenants and the vendor (*b*) shall not be required to produce the title of the lessor and if any deeds certificates or other documents (not in the vendor's custody) shall be required to be produced the same to be at the purchaser's expense and all attested copies to be also at the purchaser's expense.

V. There are various fixtures (an inventory whereof will be produced at the time of the sale) which the purchaser is to take at a valuation to be made thereof by two referees or their umpire and paid for at the time of completing the purchase of the estate and the purchaser may be accommodated with all or any part of the furniture at a like valuation.

VI. Taking timber, see *General Form*, Art. VI.

VII. If through mistake any article is misstated or omitted in this particular such error or errors shall not vitiate the sale but the purchaser or vendor as the case may happen shall pay

(*a*) Or, "the purchaser shall require no other evidence of title than a lease granted by indenture of demise bearing date &c."

(*b*) As to the necessity of this stipulation, see *ante*, Pref. sect. 8, p. 625.

or allow a proportionate value to the average of the whole purchase money as a compensation either way.

LASTLY. Upon failure of complying &c. see *ante*, *General Form*, p. 633.

No. CCCIV.
Lands
(*Leaseholds*).

Memorandum written under the Conditions.

It is hereby agreed and declared between and by the vendor of the estate mentioned in the foregoing particular of sale [or “by A. B. of &c. his agent”] and (*purchaser*) of &c. [or “by C. B. of &c. his agent”] that the said (*P.*) has become the purchaser of the pieces or parcels of land and premises mentioned and comprised in the foregoing particular and that the sum of £ hath been paid down by the said (*P.* or *A.*) to the said (*V.* or *A.*) by way of deposit and in part of the said purchase money and that the said particular and conditions of sale shall be taken as the terms of agreement for the sale and purchase respectively *Witness* &c.

No. CCCV.

Conditions of Sale of Estates under the Order of the Court of Chancery (a).

No. CCCV.
Under Decree
of Chancery.

I. No person is to advance less than £ at each bidding.

II. The sale is subject to a reserved bidding for each lot which has been fixed by the judge to whose court this cause is attached.

III. Each purchaser is at the time of sale to subscribe his name and address to his bidding and the abstract of title and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address unless or until he is represented by a solicitor.

IV. Each purchaser is at the time of sale to pay a deposit of £ per cent. on the amount of his purchase money to the person appointed by the said judge to receive the same.

Where deposits
are to be paid,
the person
appointed to
receive them
must give
security (*b*).

(*a*) See affidavit of auctioneer of result of sale, *ante*, No. XXXIV. pp. 62—64.

(*b*) To be inserted only when a deposit directed.

No. CCCV.
*Under Decree
 of Chancery.*

V. The chief clerk of the said judge will after the sale proceed to certify the result and the day at of the clock in the noon is appointed as the time at which the purchasers may if they think fit attend by their solicitors at the chambers of the said judge at in the county of Middlesex to settle such certificate The certificate will then be settled and will in due course be signed and filed and become binding without further notice or expense to the purchasers.

VI. The vendor is within days after such certificate has become binding to deliver to each purchaser or his solicitor an abstract of the title to the lot or lots purchased by him subject to the stipulations contained in these conditions And each purchaser is within days after the actual delivery of the abstract to deliver at the office of solicitor at in the county of a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract and upon the expiration of such last mentioned time and in this respect time is to be deemed of the essence of the contract the title is to be considered as approved of and accepted by such purchaser subject only to such objections and requisitions if any.

VII. Each purchaser is in addition to the amount of his bidding at the sale to pay the value of all timber and timber-like trees tellers and pollards (if any) on the lot purchased by him down to 1s. per stick inclusive the amount thereof to be ascertained by a valuation to be made in manner following (that is to say) each party (vendor and purchaser) or their respective solicitors is within days after the chief clerk's certificate has become binding to appoint by writing one valuer and give notice in writing to the other party of such appointment and the valuers so appointed are to make such valuation but before they commence their duty they are to appoint an umpire by writing and the decision of such valuers if they agree or of such umpire if they disagree is to be final and in case the purchaser shall neglect or refuse to appoint a valuer and give notice thereof in the manner and within the time above specified the valuation is to be made by the valuer appointed by the vendor alone and his valuation is to be final.

VIII. Each purchaser is under an order for that purpose to be obtained by him or in case of his neglect by the vendors at the costs of the purchaser upon application at the chambers of the said judge to pay the amount of his purchase money (after

deducting the amount paid as a deposit) together with the amount of the valuation under the 7th Condition (if any) into the Bank of England with the privity of the accountant general of this court to the credit of this cause on or before the day of and if the same is not so paid then the purchaser is to pay interest on his purchase money including the amount of such valuation at the rate of £ per cent. per annum from the day of to the day on which the same is actually paid deducting property tax Upon payment of the purchase money in manner aforesaid the purchaser is to be entitled to possession or to the rents and profits as from the day of down to which time all outgoings are to be paid by the vendors.

No. CCCV.
Under Decree of Chancery.

To be altered if the fourth or sixth condition is not inserted.

This to be in accordance with the order directing the sale.

This must be a day subsequent to the time fixed for delivering objections to the title and when the judges' chambers and accountant-general's offices are open.

IX. If any error or misstatement shall appear to have been made in the above particulars such error or misstatement is not to annul the sale nor entitle the purchaser to be discharged from his purchase but a compensation is to be made to or by the purchaser as the case may be and the amount of such compensation is to be settled by the said judge at chambers. [*Add to these such conditions respecting the title and title deeds as the conveying counsel shall advise to be necessary or proper.*]

LASTLY. If the purchaser shall not pay his purchase money at the time above specified or at any other time which may be named in any order for that purpose and in all other respects perform these conditions an order may be made by the said judge upon application at chambers for the resale of the lot purchased by such purchaser and for payment by the purchaser of the deficiency (if any) in the price which may be obtained upon such resale and of all costs and expenses occasioned by such default.

No. CCCVI.

Miscellaneous Conditions in the Sale of Freehold, Copyhold, and Leasehold Estates.

No. CCCVI.
Miscellaneous.

I. The vendors shall not be required to show any title to any part of any of the lots previous to the year 1809 and as to such parts thereof as have been purchased by the late owner of the estate the purchasers thereof shall be content with the titles under which they were so purchased, and shall make no objection to

As to title.

No. CCCVI.
Miscellaneous.

the same on account of any acts prior to such purchase nor shall the vendors be required to produce any evidence whatever of the seisin of any former owner or owners of the estate or any part thereof nor to produce any original grant of such part of the estates as were formerly part of commons and waste grounds or to show any other title thereto than such as is conferred by upwards of forty years possession nor to point out identify or distinguish the freehold from the copyhold part or parts of any lot nor to point out the situation of or to identify the copyhold parts held of the several manors mentioned in the particular nor in case any lot is held under more than one title to distinguish or to point out the lands held under each title nor to show a title to any land given or received in exchange by the late or any former owner or owners of any part of the estate nor to give any evidence whatever as to the identity of any lot with the descriptions in the title deeds except such as can be furnished by the deeds themselves and the other documents now in the actual possession of the vendors nor to show the title of any lord of any manor or other person upon any grant of any kind or his or their power to make such grant and all rights which have been exercised by the late or any former owner or owners of the estates for twenty years and upwards shall be deemed and taken as permanent and vested rights And as to all matters and things stated or recited as facts in any deed court roll or other document of title thirty years old or upwards such statements and recitals shall be accepted by the purchaser as conclusive evidence of such facts And the commencement of the title or the abstract thereof by the vendors at an earlier period than 1809 and the production of any deed writing or other document or of any evidence not required to be produced by the vendors shall not be considered as a waiver of this or of any other condition.

Production of
certain deeds
not to be
required.

II. The vendors shall not be required to produce any deeds or copies of deeds wills court rolls or other documents of any kind soever not already in their possession or power nor to produce enter into or obtain any covenant for the production of any such title deeds or documents nor to procure any abstracts thereof nor to point out or inquire where any such are to be found And in case the reconveyance or getting in of any legal estate or the assignment or surrender of any outstanding term or terms of years which is or are now satisfied (whether expressly assigned to attend the inheritance or not) be required by

Expenses of
getting in legal
estate.

or on behalf of any purchaser all expenses attending such re-conveyance assignment or surrender and also of tracing out and establishing the representation of such legal estate term or terms and getting in the same by whatever means shall be borne and paid by the person requiring the same and no purchaser shall on this account delay the completion of his purchase (a) And all attested official or other copies of or extracts from any deeds wills court rolls inclosure awards acts of parliament or other instruments or assurances and all certificates of births deaths or marriages and all documents writings and evidences of title of any kind soever whether required for examination with or verification of the abstract or however otherwise shall be procured and made at the expense of the parties requiring the same.

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Miscellaneous.

Expense of
attested copies,
&c.

III. The title to the greater part of the property in the particulars shall (notwithstanding any statement in the particulars) commence with a devise in of the property in the parish in which the property in the particulars is situate and as to parts of the property afterwards added to the main property with assurances in the years respectively and no title previous to the aforesaid respective periods shall be enquired into or objected to although referred to or existing on court rolls or capable of being produced by the vendors whether for the purpose of showing the title to terms of years or antecedent charges afterwards discharged or for proving identity or otherwise And all allotments made under the or Inclosure Acts in the years and respectively whether directly or by way of purchase or exchange shall be taken to be made as part or in respect or in lieu of or in exchange for the property previously in the title and as otherwise correct and valid in all respects and the lessor's title to the leasehold shall be taken as absolutely good.

Commence-
ment of title.

IV. By far the greater part of the property in the particulars being as will appear in the parish of the position and boundaries thereof are shown by the map referred to in the Inclosure Award a copy whereof is in the vendor's possession and which shall be taken as sufficiently identifying such property both with previous and subsequent descriptions And as to such part of the property as is in the parish of

Property iden-
tified by maps.

(a) Where the conditions of sale do not provide that the purchaser is to pay the expense of the assignment of an unsatisfied term, the vendor must pay the expense, *Stronge v. Hawkes*, 2 Jur., N. S. 388.

No. CCCVI. the same is partially identified by some or one of the old maps
Miscellaneous. in the vendor's possession and by the said Inclosure
 Map and the map referred to in the Inclosure Award a
 copy of a sufficient part whereof is in the vendor's possession
 and which maps shall without being shown to be connected with
 the present title be taken as sufficiently identifying such last
 mentioned property And the entire property having from time
 to time since the said respective awards been mostly included in
 general descriptions no objection shall be made as to the entire
 quantity of the particulars not being exactly shown or as to the
 quantities of the several divisions or holdings in the particulars
 not being shown.

Expenses to be
 paid by pur-
 chaser.

V. Each purchaser is to prepare and be at the expense of the
 necessary conveyances surrenders deed of enfranchisement and
 assurances by all necessary parties including existing incum-
 brancers and also to be at the expense of any deeds of covenant
 which may be required for the production of deeds and is to pay
 all fines fees and expenses incident to the surrender of the
 vendors or any other necessary parties or the admission of the
 purchaser and no preliminary admission to the copyholds is to be
 required not absolutely necessary to procure the purchaser's ad-
 mission And each purchaser is at his own expense to compare
 the abstracts with the title deeds and court rolls and on payment
 of the remainder of the purchase money agreeably to the
 condition each purchaser shall have proper conveyances sur-
 renders or assurances executed to him.

Production of
 certain deeds
 not to be
 required.

VI. No purchaser shall object to the non-production of certain
 deeds and documents relating only to interests in charges or
 monies to arise from the sale of the property or parts thereof or
 otherwise only incidentally relating to the property or to the
 non-production of certain copies of court roll or previous leases
 of the leasehold property or on account of certain of the docu-
 ments of the title being covenanted to be produced to the railway
 company to whom a small portion of the estate was sold And as
 the documents of title relate to other property or existing
 interests in the property or the money to arise by the sale thereof
 they will be retained and each purchaser will only be entitled to
 the usual covenant by trustees or mortgagees limited to the time
 they hold the same for the production and giving copies of the
 same and inasmuch as the sale is made by trustees under
 the direction of the court no covenants for title are to be ex-
 pected or required.

VII. That the purchaser shall within thirty days from the delivery of the abstract deliver to the vendor's solicitor a statement in writing signed by the purchaser's solicitor specifying all the purchaser's objections and requisitions (if any) in regard to the title or the evidence thereof or the abstract and every objection or requisition not so specified shall be considered as absolutely waived and in this respect time shall be of the essence of the contract. And if no such objections or requisitions shall be delivered within the time aforesaid and subject to such objections and requisitions as shall be so delivered within the time aforesaid the title shall be considered as absolutely accepted by the purchaser.

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Miscellaneous.

Objections to the title.

VIII. The purchaser shall make his objections and requisitions (if any) in respect of the title and of all matters appearing on the abstract particulars or conditions and send the same to the office of the vendor's solicitor within days from the day of the delivery of the abstract and in default of such objections and requisitions (if none) and subject to such (if any) shall be deemed to have accepted the title and to have waived all other objections and requisitions. And if he shall insist on any objection or requisition as to the title or abstract or evidence of title particular conditions conveyance surrender or otherwise which the vendor shall be unable or unwilling to remove or comply with the vendor may by notice in writing to be given to the purchaser or his solicitor at any time and notwithstanding any negotiation or litigation in respect of such objection or requisition annul the sale and shall thereupon return to the purchaser his deposit but without any interest costs of investigating the title or other compensation or payment whatsoever (a).

Objections to the title.

Power to annul the sale.

(a) By conditions of sale, all objections to the title were to be taken within twenty-eight days from the delivery of the abstract, which, if not removed within fourteen days, the vendor was to be at liberty to annul the contract on payment of the deposit, but without costs. The purchaser having made an objection, which was not removed, the vendor gave notice to annul the contract. The objection being held valid, the court considered the vendor entitled to avail himself of the condition; but was of opinion that, if, in giving notice to annul, the defendant had sought improperly to escape from the performance of a duty which, by the nature of the contract, he was bound to perform it would have been invalid, *Page v. Adam*, 4 Beav. 269.

The conditions of sale provided that all objections to the title disclosed by the abstract not taken within a certain time after delivery of the abstract to the purchaser should be deemed to be waived. It was held, that the time for objecting was not to be computed from the time of the delivery of an

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Miscellaneous.

Expenses to be borne by the purchaser.

As to production of documents of title.

Attested copies.

Costs for production of deeds.

IX. That the conveyance shall be prepared by the purchaser and the same shall be left with the vendor's solicitors for execution at least twelve days before the time of completion. All the costs of the conveyance (including the covenants to surrender) and surrenders and also the costs of any special court shall be paid by the purchaser.

That no deed will award or other document not in the vendor's custody recited in any deed surrender admittance or other document dated or existing thirty years prior to the day of sale nor any copy or extract of or covenant to produce any such deed will award or other document shall be required to be produced to the purchaser for verifying the abstract or verifying recitals or for any other purpose. And all attested certified office examined or other copies which shall be required by the purchaser for the purpose of verifying the abstract or recitals or of being kept by the purchaser or for any other purpose shall be furnished by the vendor and paid for by the purchaser. That the purchaser shall not be entitled to object for want of a covenant or of a sufficient covenant for the production of any of the deeds and that any covenant which shall be entered into by the vendor for the production of any instruments retained by him shall be prepared perused and executed in all respects at the expense of the purchaser. The purchaser shall not be entitled to require the production of the original of any instrument not in the vendor's possession of which a copy or what purports to be a copy shall be produced nor to require the production of any deed or instrument noticed in any covenant to produce deeds

imperfect abstract, and that the purchaser was not precluded from taking an objection which arose out of evidence called for before the expiration of the time fixed, *Blacklow v. Laws*, 2 Hare, 40.

A condition of sale was, that in case the purchaser should raise objections to the title which the vendor should not be able or willing to remove, the vendor might rescind the contract, on notice, and repayment of the deposit to the purchaser; and objections not delivered within fourteen days after delivery of the abstract to be treated as waived, in which respect time was to be essential. The purchaser returned the abstract with queries within the fourteen days, and the vendor answered the queries. The purchaser on the same day objected to the answers; the correspondence on the subject of title continued for several weeks; and then the vendor gave notice that he rescinded the contract. It was held, that the continuance of the treaty for the completion of the title, after the first objection of the purchaser, was a waiver of the condition as to the rescinding of the contract, *Morley v. Cook*, 2 Hare, 106. See *Cutts v. Thodey*, 13 Sim. 206.

unless such deeds or instrument can be procured by the vendor without suit That the expense of all journeys to compare the abstract with deeds court rolls or other instruments and for the examination thereof and all the expense relating to the production thereof and all the expense of copies and extracts of baptismal marriage and burial registers and of the verification thereof shall be paid by the purchaser That all assignments and conveyances required by the purchaser of outstanding terms or other legal estates shall be prepared perused and executed in all things at the expense of the purchaser who shall also pay all the expense of finding and deducing a title to the person or persons in whom any such term or legal estate is vested and of taking out letters of administration if necessary to constitute a proper assignor of any such terms That all births deaths survivorships descents numbers of children or issue heirships executorships intestacies and other facts and all events recited stated noticed or assumed in any instrument dated thirty years prior to the day of sale shall be taken to be sufficiently proved by such recital statement notice or assumption.

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Miscellaneous.

Expenses to be paid by purchaser.

Facts recited in deeds thirty years old.

X. That the purchaser shall not be entitled to require evidence of the identity of the parcels with the description in the deeds or court rolls nor to require the freehold part to be in any case distinguished from the copyhold part nor to distinguish in any case the parts held under different titles or to object for want of such evidence or complete identification.

Identity of parcels.

XI. That the vendor shall not be required to identify set out or distinguish the copyhold parts of any lot from the freehold parts thereof nor the copyhold parts holden under one manor from those holden under any other manor or manors and in case any lot is held under more than one title the vendors shall not be required to distinguish or point out the part or parts thereof held under each title.

XII. No evidence shall be required that any person who died more than twenty years since did not leave a widow or that any person who made a conveyance more than years ago was not married.

Dower.

XIII. The purchaser of Lot 2 shall in addition to the purchase money and as part thereof and to be paid with the same and with interest in case of nonpayment as aforesaid pay for all timber and timberlike trees pollards tellers and saplings down to one shilling per stick inclusive and for all plantations and underwood the sums to be so paid to be ascertained by

Timber to be taken at valuation.

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Miscellaneous.

valuation to be made before the first day of September next by two referees one to be chosen by the vendors and the other by the purchaser and such two referees to name an umpire previously to their proceeding to value but shall act only in case of the referees differing and the decision of such referees or umpire shall be binding on all parties and in case either party shall for ten days after notice in writing from the other omit to appoint a referee or if either of the referees shall neglect or refuse to act so as to make a decision within fourteen days after appointment the referee appointed by the other party shall make the decision which shall in like manner be binding on all parties.

Timber to be
taken at valuation.

XIV. That all timber timberlike trees tellers pollards plantations and underwood shall be taken by the purchaser at a fair valuation and he is to pay for the usual fixtures in and about the mansion house and premises and the manure ploughings seeds dressings and other things on the land in hand at a like valuation Every such valuation to be made by two referees one to be chosen by the vendor and the other by the purchaser or by an umpire to be chosen by the referees before they enter on the business of the reference every such valuation to be made some time before the twenty-ninth day of September next The purchaser will likewise be required to pay all expenses attending the keeping and preserving the game from and after the day of next in the event of the purchase not being completed on that day The purchaser shall also have the option of taking the furniture of the mansion house at a like valuation such option to be declared on or before the day of next And if the purchaser do not declare his option to take such furniture the vendor to have the power of selling the furniture on the premises In case either party neglect or refuse to nominate a referee for the purposes of any of the aforesaid valuations before the day of next the other party may name a second referee and the decision of any such referees or their umpire shall be final and the expense of every valuation in pursuance of these conditions shall be borne by the vendor and purchaser in equal moieties.

Valuation how
to be made.

Apportionment
of charges.

XV. That in all cases where an entire sum for land tax rent charge in lieu of tithes or other outgoings is payable in respect of the lands comprised in two or more lots the same shall be apportioned amongst such several lots at the sums mentioned in the particulars of each lot respectively and such apportionment

shall be accepted and deemed valid by and binding upon the respective purchasers And any act deed matter or thing that may be requisite to be made done or executed under any act of parliament or otherwise for giving effect to or otherwise for the purpose of such apportionment shall be made done or executed by and at the sole costs and charges of the purchaser requiring the same but the completion of any purchase shall not be delayed on account of such requisition.

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XVI. The apportionments of rent land tax quit rents rent charge in lieu of tithe or other outgoings mentioned in the particulars or these conditions shall be accepted as valid in all respects for the purposes of the present sale and binding upon the respective purchasers although not otherwise effectual or complete And anything that may be requisite to be done for giving legal effect to such apportionments shall be done by and at the sole expense in all things of the party requiring the same and the completion of any purchase shall not be delayed on account of any such requisition.

XVII. The purchaser of Lot 3 (if sold) shall give to the other purchasers and such purchasers shall accept an indemnity against certain annual payments of £10 and £5 (supposed to be apportioned parts of larger payments) but the apportionment thereof shall not be questioned or investigated by granting powers of distress and entry upon Lot 3 and by the covenant of the purchaser of Lot 3 or if Lot 3 shall not be sold the vendors shall give to the purchasers a like indemnity by distress and entry but without any covenant the indemnity in either case to be prepared by and at the expense of the party requiring it.

Purchaser of one lot to give an indemnity over it to other purchasers against two annual payments.

XVIII. That both the above mentioned messuages having been included in one lease and being subjected to one entire rent of £12 per annum it is intended that this rent shall in future be equally borne by each of the messuages respectively and in order to effect that arrangement the purchaser of each lot shall be held assenting thereto And each purchaser shall upon completion of his contract enter into a covenant with the purchaser or owner of the other lot for the payment of the moiety (being his proportion of the rent) to become due in future in respect of such lot purchased by him and likewise for the due observance and performance of the covenants of the lease under which the same are holden so far as the same covenants may apply wholly or partially to the lot so purchased by him And each of such purchasers shall also give to the other purchaser or to the owner (as

When two houses are held under one ground rent, and the rent is to be apportioned equally on the two houses.

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Miscellaneous.

the case may be) of the lot remaining unsold an indemnity against such rent and to secure the observance and performance of such covenants as aforesaid by a power of distress to be exercised by the purchaser or proprietor of one lot over the lot adjoining each of which lots is now offered for sale And such deeds of indemnity each purchaser shall receive from the other purchaser or owner (as the case may be) the same to be prepared at their joint expense.

Apportionment
of rents of
leasehold.

XIX. As Lots 2 and 3 are held by one lease and the reserved rents are to be apportioned equally between the respective purchasers each purchaser shall give to the other holding the same lease a covenant of indemnity against the covenantor's share of the rent and of the covenants and also a further indemnity against the rent a power of distress such covenant and power to be prepared by and at the expense of the person requiring the same but the costs attending the execution and the perusal on behalf of the covenantor to be borne by such covenantor and if any dispute or question shall arise in regard to the nature or form of the indemnity to be given for the purpose aforesaid the same shall be referred to whose decision thereon shall be final and who shall also determine (if he think proper) as to the cost of the reference.

Commence-
ment of title.

XX. That as to the leasehold premises now offered for sale (comprising Lot 1 to 4 both inclusive) the title shall commence with the respective leases and these having been granted by [*name of lessor*] shall be presumed to be valid and effectual and to contain ordinary covenants and the production of the receipt for the respective rents down to the 29th day of September the period for which the outgoings are to be cleared by the vendor shall be accepted as conclusive evidence that the covenants in such leases have been duly performed to the period of the completion of the respective contracts The counterpart of the existing underlease of Lot 4 will be produced at the sale and for seven days previously at the office of and shall be presumed to be valid.

Assignment
and under-
leases.

XXI. That the purchaser of the largest lot in value shall take an assignment of the lease and shall execute to the other purchasers underleases of the lots purchased by them respectively for the remainder of the said term (wanting ten days) subject to the rent of £ in respect of such lots and by such underleases each purchaser shall be indemnified against the payment or observance of any portion of the rent and covenants mentioned in the lease except the rent and cove-

nants to be paid and performed in respect of his particular lot and shall covenant for the payment of his proportion of the said rent and covenants. If any lot shall remain unsold the vendor shall stand in the place of the purchaser of the largest lot in value for the purposes of this condition. Every instrument to be executed under this condition shall be prepared by and at the expense of the respective purchasers who shall also execute at their own expense counterparts of their leases (a).

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Miscellaneous.

XXII. The bulk of the estate is subject to the following annuities namely an annuity of £1000 to A. B. aged about for his life an annuity of £ &c. which annuities were originally charged on this and other estates and on sale of the other or part of the other estates were charged upon the estates of the present vendor in the county of by way of indemnity to the premises comprised in such sale. The purchaser shall not be entitled to require the said purchaser's premises to be released from the said annuities but shall be entitled to an indemnity against the same by a covenant of the vendor and also a demise by the vendor to a trustee to be named by the purchaser for a term of years of the estates comprised in the former indemnity upon such trusts as shall be proper for indemnifying the purchaser at this sale against the said annuities and all claims and demands costs and expenses in respect thereof. An abstract shall be produced to the purchaser at this sale of the indemnity deed already executed and the purchaser shall be satisfied of the sufficiency of the proposed indemnity in point of value but shall not investigate or object to the title of the vendor to the hereditaments to be comprised in such indemnity nor be entitled to the title deeds relating to the premises to be comprised in the said indemnity but the purchaser shall be entitled if he requires the same to copies of the title deeds of the indemnity lands to be prepared at the expense of the purchaser and delivered at the completion of the purchase the costs of preparing and completing the said indemnity by the covenant of the vendor to be paid by the said vendor but the costs of preparing and perfecting the said further indemnity by demise to be paid by the said purchaser a schedule of the lands comprised in the indemnity will be produced at the sale.

Estate sold
subject to
annuities.

(a) Under a condition that the largest purchaser shall take an assignment of the lease and execute underleases to the other purchasers, he is bound to covenant and indemnify the other purchasers against any breach of covenants contained in the original lease relating to any part of the property, *Brown v. Paull*, 2 Jur., N. S. 317.

No. CCCVI.

Miscellaneous.

Custody of title deeds on a sale in lots.

XXIII. The purchaser of the largest part in value (*a*) of the property shall be entitled after the completion of the sale of all the property to the custody of the muniments of title and shall enter into the usual covenants with the purchasers of the other parts of the property for the production and furnishing copies of such muniments such covenants to be prepared by and at the expense of the purchasers requiring the same. If any part of the property shall not be sold at this sale the vendor shall retain such muniments until all the property shall be sold and the purchasers of the lots sold shall in the meantime be entitled at their own expense to the production of such muniments and to copies of them but not to a covenant for that purpose. The vendor will retain such muniments of title as relate to any of the property offered for sale and also to other property not included in the sale and will enter into the usual covenants with the purchaser for the production and furnishing of copies thereof such covenants to be prepared by and at the expense of the purchasers requiring the same and to be made determinable on the vendor parting with the same muniments and procuring (without expense to the purchasers) the person or persons to whom the same shall be delivered to enter into similar covenants with the purchasers or the persons for the time being entitled to the benefit of the vendor's covenants.

Title deeds to remain with vendors until lots be sold, to be then delivered to purchaser of the largest lot.

XXIV. That such of the evidences in the vendors' possession as relate exclusively to the lots sold shall be delivered on completion to the respective purchasers but the vendors shall either retain the rest of such evidences until sale of the remaining lots to be then delivered to the largest purchaser upon his entering into the usual covenants with the other purchasers at their expense for the production thereof and to be in the meantime

(*a*) By conditions of sale the title deeds were to be delivered to "the purchaser of the largest lot." A. purchased the largest lot in value and extent, but B. purchased several lots whose aggregate value and extent exceeded those of A.'s lot; it was held, that A. was entitled to the custody of the deeds, *Scott v. Jackman*, 21 Beav. 110. See *Griffiths v. Hatchard*, 1 Kay & J. 17; 18 Jur. 649.

The costs of covenants to produce title deeds which cannot be delivered up, fall by the practice of conveyancers on vendors, yet where, by the conditions of sale of property in lots under an order of the court, provision was made for the largest purchaser to have the deeds, and a covenant to produce them, or give copies thereof to the purchasers of smaller lots, without reference to the manner in which the costs were to be paid, each purchaser and not the estate was ordered to bear his own costs of such covenants. *Strong v. Strong*, 4 Jur., N. S. 943.

produced to the several purchasers when required or shall at the option of the vendors deliver the same to the largest purchaser on his entering into such covenants and also at the vendors' expense a like covenant with them.

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Miscellaneous.

No. CCCVII.

Conditions (a) for the Sale of Timber.

No. CCCVII.
Timber.

I. That there shall be two bidders at the least and the highest bidder to be the purchaser at the expiration of three minutes from the preceding bidding provided the same shall be as much as a sum to be mentioned in a paper sealed up and laid upon the table for each lot so specified previous to the commencement of sale and if any dispute shall arise the same lot shall be put up again for sale.

II. See *ante*, *General Form*, Art. II.

III. That the purchaser of each lot shall immediately pay down a deposit of 10*l.* per cent. in part of the purchase money and the remainder on the day of 18 .

IV. That the purchaser of each lot shall enter into proper articles agreeable to these conditions at the joint expense of himself and the vendor and shall also within four days from this day at his own expense enter into a bond with sufficient security to be approved by vendor at his house in &c. for payment of the remainder of the purchase money according to the third condition above mentioned and also for the performance of these conditions and until such security is given the timber trees and other wood and every part thereof to be considered as the property of the vendor whether fallen or not.

V. That the purchaser his servants and agents shall have power to enter on the premises where the trees are growing and shall at his own expense properly axe fall and cut down the said ash and underwood on or before the day of &c. and also shall cut down the said timber and other trees and butts and top the same on or before &c. without doing any wilful damage

(a) This was inserted in the first edition from Shipman's edition of Jones's "Attorney's Pocket Book," but not acknowledged in the first editions, because it was presumed (under a mistake) to have formed part of the original work. See *ante*, AGREEMENT, pp. 174—176; BARGAIN AND SALE, pp. 458—460.

No. CCCVII. to the saplings or other wood in the coppices hedges fences or
Timber. premises the said timber and other trees to be stocked and the roots and spuries got out of the ground in a fair and workman-like manner but such of the trees as grow on the banks of the brooks gutters or rivulets to be axe-fallen in such manner as the vendor shall direct so as to prevent the banks of the same from being broken in.

VI. That the whole of the said ash and underwood shall be cleared off the said coppices and premises on or before the said day of next and the whole of the timber or other trees bark cordwood and wood arising from the said timber trees shall be cleared off from the said lands and premises by the usual and proper roads to the same on or before &c. until which time the purchaser shall have the usual privileges of sinking sawpits and getting turf in such places as shall be appointed by the vendor or his agent for that purpose for converting the said timber and coaking the cordwood not doing any wilful damage to the saplings or other wood growing on the said coppice and premises such sawpits so to be made as aforesaid shall be properly fenced or covered and shall immediately after the converting of such timber be filled up at the expense of the purchaser except as hereinafter mentioned and such of the ash underwood or other trees cordwood or other wood as is are or shall be then remaining on any part of the said land and premises shall be forfeited to the said vendor as and for a compensation for such damage as shall be occasioned thereby.

VII. That the said purchaser shall have the boughs and tops of the said timber and other trees cut off and laid on the bodies thereof or under the hedges and fences by which the least damage can be done to the crops of grain within three days after such being fallen and shall not work or carry away any part of the said timber or other trees till after such crops of grain are cut or carried except the bark of such timber or other trees which the purchaser shall have carried from and off the said crops of grain without taking any horse or carriage on such crops for such purpose.

VIII. That the purchaser shall allow five stakes for every tree fallen in the hedge-rows or fences to make up the gaps in the said fences where such trees are so fallen as aforesaid and also a full compensation for all damages sustained in falling such ash underwood timber and other trees (except such as are necessary and reasonable).

LASTLY. That if the purchaser shall refuse fail or neglect to perform the several conditions hereinbefore stated the deposit money shall be forfeited to the vendor who shall be at liberty either to enforce the present contract or to resell the timber or other trees as aforesaid by public auction or private contract and the deficiency (if any) of such second sale together with the charges attending the same shall be made good by the defaulter at this present sale.

No. CCCVII.

Timber.

No. CCCVIII.

Conditions of Sale of Goods (a).

No. CCCVIII.

Goods.

I. Highest bidder the purchaser &c. see Art. I. (*General Form.*)

II. No person to advance less than sixpence above ten shillings one shilling above five pounds five shillings and so on in proportion.

III. The purchasers to give in their names and places of residence (if required) and pay down a deposit of thirty per cent. in part payment of purchase money in default of which the lot or lots so purchased will be immediately put up again and resold.

IV. The lots to be taken away at the buyer's expense within days after and the remainder of the purchase money to be absolutely paid on or before delivery (*b*).

V. Upon failure of complying with these conditions the deposit money shall be forfeited and all lots uncleared within the time aforesaid shall be resold by public auction or private sale and the deficiency (if any) on such resale shall be made good by the defaulter.

On the sale of books, add, as a condition to precede the last :

“The books are presumed to be perfect unless otherwise expressed but if upon collating at the place of sale any should prove defective the purchaser will be at liberty to take or reject them but the sale of any book is not to be set aside on account of stained or short leaves.”

(a) For other forms, and as to forms for letting by auction, see Bateman's Law of Auctions, Append. I., 149 *et seq.*

(b) As to the effect of this condition, see *ante*, Pref. sect. 9, p. 628.

No. CCCVIII.

Goods.*On the sale of horses, add as follows :*

“ A warranty of soundness when given at this repository will remain in force until twelve o'clock at noon on the day next after the day of sale when it will become complete and the responsibility of the seller will terminate unless in the meantime a notice to the contrary accompanied by a certificate of a veterinary surgeon be delivered at in which certificate shall be set forth the cause and nature or description of the alleged unsoundness. In this case the seller to have the option of procuring the certificate of a second veterinary surgeon (which he shall be bound to do within twenty four hours after the delivery of the purchaser's notice and certificate of unsoundness above mentioned or the sale to be void) whose opinion if it should coincide with the first shall be definite but if the opinions differ the two veterinary surgeons shall forthwith call in a third whose certificate shall be final and binding on both parties the party in the wrong to pay all the expenses.” See *Bywater v. Richardson*, 1 Ad. & Ell. 508.

On the sale of merchandize, add as follows :

“ The goods to be taken with all faults and defects as they now lie to be reweighed within ten days and to be at the purchaser's risk from the time of weighing to be taken from the scale at the purchaser's expense and the warehouse to be cleared within two months or rent to be paid for any that may remain after that time.

“ Payment to be made on delivery of the bills of parcels by bills &c. and in case of default the goods to be resold forthwith and the loss (if any) made good by the defaulter.

“ Purchasers to pay all duties of customs.

“ The signing of the catalogue by the selling broker to bind both seller and purchaser.”



No. CCCIX.

*Commercial
Sale.*

No. CCCIX.

Conditions of a Commercial Sale.

Obs. Since the introduction of the docks, it has become the practice to dispose of warehoused goods by public sale, in the same manner as had been before adopted by the East India Company, which sales are conducted by brokers. The following conditions, which were

commonly used by the East India Company at their sales, may, with slight variations, be adapted to any such commercial sales, Pulling's Treatise on the Laws, &c. of London, p. 464, 2nd ed.

No. CCCIX.
*Commercial
Sale.*

I. The highest bidder to be the purchaser and if any dispute arise the same is to be decided by a show of hands or to be left to the decision of the selling broker.

II. The buyers of goods at this sale are to pay all duties of customs and excise (*a*) which now are or may hereafter be imposed upon the same by any act of parliament.

III. All brokers who shall buy at this sale are to take notice that they are within three days after the conclusion of the sales to declare in writing the names of their principals with their places of abode and all brokers who buy for persons in the country or abroad shall at the time they declare their principals produce their orders for the same together with the undertaking of a resident known agent in London to make good the contract Should any broker neglect to declare his principal in the manner above mentioned or buy for persons under age he shall be esteemed the principal and shall himself be obliged to pay for the goods so bought by him.

IV. Every person whether broker agent or principal who shall be declared to be the best bidder for any lot or lots of goods at this sale shall make such deposits as are expressed in the catalogue on (*b*) or immediately after the sale of any lot if required in default of which the lot to be put up again and shall pay the remainder of the purchase money on delivery of the warrants on or before the prompt day (*c*) (*which is always fixed*) without discount.

V. In case any buyer of goods shall make default in payment of his deposit or in paying the remainder of the purchase money the goods shall be as soon after as convenient resold by public auction or private contract at the option of the selling broker and the difference in price if any together with the expenses and interest of money or other damage shall be made good by the defaulter.

VI. In all cases where the goods have been exposed to view

(*a*) Except sugars, hides, and some others, which are sold duty paid, Pulling, *ub. sup.*

(*b*) This is usually made a few days after, Pulling, *ub. sup.*

(*c*) By the "prompt day" is understood the day for payment on sales of goods, not payable by bills, which varies in different trades, Pulling, *ub. sup.*

No. CCCIX. *Commercial Sale.* so as to afford opportunity for purchasers to exercise their own judgment no allowance whatever will be made nor will the purchasers be permitted to relinquish on any pretence any lots they may have bought.

VII. No allowance will be made upon any goods by reason of damage or otherwise that shall remain in the warehouse after the prompt day The buyers shall be at liberty to have the packages opened at their own charge previous to the prompt day and if any goods be damaged (unless as described in the catalogue) or any pieces be wanting the buyers shall have and accept such allowance as two or more brokers shall deem reasonable but no allowance on any pretence whatever shall be made on any goods bought at this sale after the same have been taken away.

VIII. All goods bought at this sale shall remain at the risk of the sellers until the prompt day unless previously paid for.

IX. The buyers are to pay lot money as customary to the selling broker on every lot whether bought at or after the sale until the prompt day.

X. The buyers are to pay warehouse rent for every lot of goods that remains in the warehouse after the prompt day also all delivery and packing charges according to the rates of the several dock companies in whose warehouses the same may be respectively lying.

No. CCCX.

No. CCCX.
Sale of Ship.

Conditions of Sale of Ship (a).

The proprietors of the ship or vessel called the now lying causing her to be exposed to sale on the conditions following viz. :

The proprietors do consent and agree to and with the buyer that whosoever bids most and last in due time after he has declared his name and the broker has repeated the same shall be deemed the buyer who is immediately to pay on account one fourth part of the purchase money and the residue within one month after the sale or at the time of delivery of the bill of sale whichever may first happen and two guineas to the broker to bind the bargain On payment of the whole purchase money a legal bill of sale shall be made out to the purchaser

(a) See conditions of Sale of a Ship, Wilkinson on Ships, p. 345.

at his expense and the vessel with what belongs to her shall be delivered according to the inventory which had been exposed but the said inventory shall be made good as to quantity only The vessel and stores shall be taken with all faults in the condition they now lie without any allowance for weights lengths qualities or any defects whatsoever :

No. CCCX.

Sale of Ship.

But in case any default shall be made by the purchaser in the payment aforementioned the money paid in part shall be forfeited to the sole use of the present proprietors and they shall be at liberty to put up and sell the said vessel again :

And neither the broker or any of the present proprietors his or their heirs executors administrators or assigns shall be any-ways accountable or liable to be sued either in law or equity for the said money paid in part and forfeited as aforesaid but the buyer so neglecting shall be liable for all loss costs and damages which may accrue thereby :

And for encouragement to the buyer the said vessel is put up at to advance pounds at each bidding and no less.

If any difference shall arise at the sale the said vessel shall be put up again.

London the (date) Messrs. A. & B. of &c. merchants have this day bought the said (ship or vessel) and stores on the above mentioned conditions of sale for the sum of

Witness

CONFIRMATIONS.

- | | |
|---|---|
| 1. <i>Definition.</i> | <i>Must be a free Agent.</i> |
| <i>Different Kinds of Confirmation.</i> | 2nd. <i>Precedent Estate.</i> |
| 2. <i>Operative Words.</i> | 3rd. <i>Estate of Confirmor.</i> |
| 3. <i>Requisites.</i> | 4. <i>Confirmation, when necessary.</i> |
| 1st. <i>A good Confirmor, &c.</i> | 5. <i>Effect of Confirmation.</i> |
| <i>Infant, &c.</i> | 6. <i>Stamp Duty.</i> |
| <i>Party confirming must be informed of his rights.</i> | |

SECT. 1. A confirmation is a conveyance of an estate, or a right in esse, whereby a voidable estate is made sure and valid, or a particular estate is increased and enlarged, Co. Litt. 295 ; or, in other words, a confirmation is the approbation or assent to an estate already created, which, as far as in the confirmor's power, makes it good and valid, Gilb. Ten. 75. Estates which are absolutely void do not admit of

Confirmations.

confirmation, but those which are voidable only; therefore a lease by tenant for life, being merely void at his death, cannot be confirmed by the remainderman, *Doe v. Butcher*, 1 Doug. 50, recognized in *Doe v. Archer*, 1 B. & P. 531; but if a tenant for life makes a lease for twenty years generally, and he in the reversion confirms the lease, then that which would have determined at the death of the tenant for life becomes good and unavoidable, *Ann Mayowe's case*, 1 Co. 147; Poph. 50; as to leases, see further, *post*, LEASES. So a confirmation will not add to or take from an estate a descendible quality, nor make a man capable of it, who is incapable of himself, *Shep. Touch.*

Different kinds of confirmation.

312. A confirmation is either express or in deed, that is, when the act done or deed made is intended for a confirmation, or it is implied in law, when the law by construction makes a confirmation of a deed intended for another purpose; therefore if tenant for life and his lessor make a feoffment by deed, this is the feoffment of the tenant for life and the confirmation of the lessor, although there is no word of confirmation in the deed, *Plowd.* 140.

Operative words.

2. The most apt and proper words in a confirmation are, "confirm, ratify and approve;" although "give and grant" and other general words will make a good confirmation, *Litt.* 515; *Shep. Touch.* 311; *Gilb. Ten.* 39. And a bargain and sale which fails to operate as such for want of a consideration has been held to enure as a confirmation, *Osborn v. Churchman*, *Cro. Jac.* 127; so although regularly an estate is not created by a confirmation, yet such words may be used in a confirmation as may increase or enlarge the estate, but that is effected by the force of those words, and is foreign to the confirmation, *Butl. Co. Lit.* 295, n. 1; *Gilb. Ten.* 75; as if the lessor confirms the estate of the lessee for life, and adds this clause, "without impeachment of waste," *Beaumont's case*, 9 Co. 139 b; so far as the particular estate is increased, it is not the confirming or strengthening of the tenant's estate, but the giving him a greater one. Such a deed is properly a deed of release, and not a deed of confirmation, *Shep. Touch.* 311.

Requisites of a good confirmation.

Infant.

3. In every good confirmation there must be—1st. A good confirmor and a good confirmee, and a thing to be confirmed, as in other grants, and the deed must be under seal, &c. As a rule an infant after he is of full age may confirm any contract not absolutely void, *Chesterfield v. Jansen*, 2 Ves. 146, recognizing *Cole v. Gibbons*, 3 P. Wms. 290; but since the 9 Geo. 4, c. 14, s. 5, such confirmation must be in writing to be valid; so any person may confirm a contract who is not ignorant of his rights, *Cann v. Cann*, 1 P. Wms. 723; and if he does it with his eyes open he will be bound, if the contract is not absolutely void for fraud, *Morse v. Royal*, 12 Ves. 355; *Braybroke (Lord) v. Inskip*, 8 Ves. 417; *Roche v. O'Brien*, 1 Ball & Beat. 355.

To give validity to a confirmation of a voidable conveyance, the party confirming must not be ignorant of his right, but should have full knowledge that the transaction which he is called upon to confirm is liable to be impeached, *Cann v. Cann*, 1 P. Wms. 723; *Dunbar v. Tredennick*, 2 Ball & Beat. 317. Where a person is called upon to join in a conveyance for the purpose of obviating a specified objection to the title, he will not be bound as to any other interest of which he was not apprised, though if he is told generally that there are objections to the title, and consents to join in the conveyance it must be taken that he has inquired into the nature of the objections, and shall not afterwards raise a question as to the extent of his information, *Braybroke (Lord) v. Inskip*, 8 Ves. 417; *Cholmondeley v. Clinton*, 2 Mer. 355; Sugd. V. & P. 1021, 11th edit. A man cannot be held by any act of his to have confirmed a title, unless he was fully aware at the time not only of the fact upon which the defect of title depends, but of the consequences in point of law, *Cockerell v. Cholmeley*, 1 Russ. & M. 420.

Confirmations.

Party confirming must be informed of his rights.

No act of confirmation will be valid if not given freely, but under the influence of the former transaction, *Crow v. Ballard*, 3 Br. C. C. 117; see *Scott v. Davis*, 4 My. & Cr. 91; and, therefore, a deed of confirmation called for under the pressure and influence of the former transaction, when the confirming party cannot be represented to be a free agent, will not avail, *Medlicot v. O'Donel*, 1 Ball & Beat. 156; *Morse v. Royal*, 12 Ves. 374; Sugd. V. & P. 277, 11th edit.

Must be a free agent.

2nd. There must be a precedent estate in him to whom the confirmation is to be made, in his own or another's right; or, at least, he must have the possession of the thing whereof the confirmation is to be made, that it may be as a foundation for the confirmation to work upon, Shep. Touch. 313. And this is the same whether the possession be rightful or wrongful. If a man confirm a disseisor's estate for an hour, this passes the fee without the word "heirs;" because the disseisee has the fee, and when he confirms it he cannot afterwards destroy it, 1 Inst. 297; Gilb. Ten. 75.

Precedent estate.

3rd. The estate of the confirmor must be such as to enable him to make a confirmation; therefore if tenant in tail and the issue in tail join in a grant of the next avoidance, and the tenant in tail dies, this is not a confirmation by the issue in tail, for he had nothing at the time, 1 Roll. 482.

Estate of confirmor.

4. If any lease be made by any bishop, dean and the like, which is not warranted by the 32 Hen. 8, or within any other statute, it must be confirmed by the dean and chapter under their common seal; *sed secus*, if it be warranted by the statute, Dy. 145; 1 Inst. 300; so if a bishop grant an ancient office belonging to his bishopric, although it be but for the life of the grantee, it must be confirmed by the dean

Confirmation, when necessary.

Confirmations. and chapter, *Bishop of Salisbury's case*, 10 Co. 62; so if tenant for life grant a rent-charge to I. S. and his heirs, in this case he in the reversion must confirm it, otherwise the grant will be good for no longer than the life of the grantor, *Ann Mayowe's case*, 1 Co. 147.

Effect of a confirmation. 5. Where a man has an estate but for life, and he in the reversion confirms the estate to him and his heirs, the confirmation as to the heirs is void, because nothing new is granted by such confirmation; but if it had been "to have and to hold the land to him and his heirs," that had amounted to a grant of the fee; for then there appears to be a further intent than merely to confirm the estate, that is, to enlarge it to him and his heirs. And my Lord Coke observes, "the *habendum* and the premises do in substance well agree together; and that the *habendum* may enlarge the premises, but not contract it;" Co. Litt. 299 a; Gilb. Ten. 78. A confirmation may be made of part of the land, but it cannot be made for part of an estate, if freehold; Co. Litt. 298 b, 299 a; but there may be a confirmation of a lease for years for part of the term, as where a lease for 70 years is confirmed for 51, because a term for years is a divisible thing, *Foord's case*, 5 Co. 81; *Earl Derby v. Taylor*, 1 East, 502.

Stamp duty. 6. A confirmation simply as such, which does not create or pass any estate, is not a conveyance, and does not require an *ad valorem* stamp by the 55 Geo. 3, c. 184, Sched. Pt. I.; but being mostly by deed requires a deed stamp. Any writing, however, not under seal, which confirms contracts and promises is exempt from all stamp duties by the 9 Geo. 4, c. 14. Confirmations are sometimes made by separate deeds, but they more frequently form a part of a grant, release or assignment.



No. CCCXI.

No. CCCXI.

Heir at Law.

Confirmation by an Heir at Law of Estates devised to a Stranger.

Stamp. *Obs.* A deed stamp of 1l. 15s. and a progressive duty of 10s. for every 1080 words above the first 1080.

Recitals. *This Indenture* made &c. Between (*confirmor*) of &c. the eldest son and heir at law &c. of the one part and (*confirnee*) of &c. and devisee named in the will of &c. of the other part *Whereas* the said (*testator*) by his last will &c. gave and devised or intended to give and devise the messuage &c. hereinafter described unto the said (*confirnee*) his heirs and assigns *And whereas* [*recite death of testator and probate of will*] *And whereas* doubts have been entertained with respect to the validity of the said in part recited devise but the said (*confirmor*) being satis-

fied that the said testator was at the time of making and publishing his said will of sound and disposing mind and that the same was signed and published by him as his last will and testament is desirous of confirming the said devise or otherwise conveying and assuring the said lands and hereditaments unto and to the use of the said (*confirmer*) and his heirs according to the true intent and meaning of the said will *Now this Indenture witnesseth* That for the end intent and purpose aforesaid He the said (*confirmer*) *Doth* grant ratify and confirm unto the said (*confirmer*) (in his actual possession now being under and by virtue of the said devise) and his heirs *All &c.* [*parcels, general words, all the estate, &c.*] *To have and to hold* the said messuages &c. hereby granted and confirmed or intended so to be unto and to the use and behoof of the said (*confirmer*) his heirs and assigns for ever *And* the said (*confirmer*) for himself his heirs &c. doth hereby covenant with the said (*confirmer*) his heirs and assigns in manner following that is to say [*that he hath not incumbered, see ante, p. 452*] *And further* that for and notwithstanding any act deed matter or thing made done committed or knowingly suffered by him the said (*confirmer*) or by or with his consent or privity He the said (*confirmer*) his heirs or assigns shall and may from time to time and at all times hereafter peaceably and quietly have hold use occupy possess and enjoy the said messuages hereby granted and confirmed or intended so to be with their and every of their appurtenances without any let suit trouble hindrance molestation disturbance claim or demand whatsoever of or by the said (*confirmer*) his heirs or assigns or any other person or persons whomsoever now or hereafter lawfully rightfully or equitably claiming or having title to claim any estate right title or interest of in to or out of the same hereditaments and premises or any part thereof by from through under or in trust for him them or any of them [*add covenant for further assurance by confirmer*] *In witness &c.*

No. CCCXI.
Heir at Law.

Testatum.

Habendum.

Covenant.

Has not incumbered.
For quiet enjoyment.

No. CCCXII.

Confirmation of a Lease by the Lessor in whom the Legal Estate was not vested on the Execution of the Lease, but who had subsequently acquired it.

No. CCCXII.
Of a Lease.

This Indenture made the day of 18 Between
the within named (*lessor*) of the one part and the within named

No. CCCXII. <i>Of a Lease.</i>	(lessee) of the other part <i>Whereas</i> for the purpose of removing all doubt whether the term granted by the within written indenture is a term of legal or equitable estate the said (<i>lessor</i>) in whom the legal estate of inheritance is now vested hath consented and agreed to make and execute the demise and confirmation hereinafter contained <i>Now this Indenture witnesseth</i> That in pursuance and in exercise of every power and authority powers and authorities enabling the said (<i>lessor</i>) in this behalf by way of confirmation and as far as these presents can operate by confirmation and as far as these presents cannot operate by confirmation then by way of appointment or demise He the said (<i>lessor</i>) <i>Doth</i> by these presents direct limit and appoint and also grant demise and confirm unto the said (<i>lessee</i>) his executors administrators and assigns All that piece or parcel of land messuage or dwelling house and buildings hereditaments and premises mentioned and comprised in the within written indenture and thereby demised or expressed or intended so to be and every
Recital.	part and parcel of the same with the appurtenances <i>To have and to hold</i> the said piece or parcel of land &c. hereby demised or confirmed or otherwise assured or intended so to be and every part and parcel of the same with the appurtenances unto the said (<i>lessee</i>) his executors administrators and assigns henceforth for and during all so much and such part of the time of the term granted or intended so to be granted by the within written
Appointment and confirmation.	indenture as is now to come and unexpired Subject nevertheless to the same or the like rent as was reserved by the within written indenture and to be payable in the same or the like manner and on the same days as that rent was made payable and subject to the same or the like covenants provisoes conditions or agreements as were or are contained in the same indenture on the part of the said (<i>lessee</i>) his heirs executors administrators or assigns to be paid done observed and performed <i>And</i> the said (<i>lessee</i>) <i>Doth</i> hereby for himself his heirs executors administrators and assigns covenant and agree with the said (<i>lessor</i>) his heirs and assigns that he the said (<i>lessee</i>) his heirs executors administrators or assigns shall or will henceforth from time to time during the continuance of the term hereby granted or confirmed or intended so to be well and truly pay satisfy and discharge the yearly rent of £ mentioned in and reserved or intended to be reserved by the within written indenture and by these presents when and as the same rent shall henceforth become due and payable <i>And</i> from time to time during the con-
Habendum for residue of term.	
Subject to the rents reserved,	
and the costs contained in lease.	
Covenant by lessee to pay the rent,	

tinuance of the same term observe perform fulfil and keep all and singular the covenants stipulations and agreements expressed and contained in the within written indenture or the counterpart thereof and which by and on the part and behalf of the said (*lessee*) his executors administrators and assigns are or ought to be henceforth observed performed and kept for or in respect of the premises demised by the within written indenture or intended so to be as far as the same covenants conditions and agreements can be observed and performed with reference to the term granted or confirmed by these presents *And* the said (*lessor*) Doth hereby for himself his heirs executors administrators and assigns covenant and agree with the said (*lessee*) his executors administrators and assigns that he the said (*lessor*) his heirs executors administrators or assigns shall and will henceforth from time to time during the continuance of the term granted or confirmed by these presents well and truly observe perform fulfil and keep all and singular the covenants stipulations and agreements expressed and contained in the within written indenture of lease or the counterpart thereof and which by and on the part and behalf of the said (*lessor*) his heirs executors administrators and assigns are henceforth in respect of the messuages and other the premises demised by the within written indenture to be observed performed and kept as far as the same can be observed performed and kept with reference to the term granted or confirmed by these presents *In witness &c.*

No. CCCXII.

Of a Lease.

and perform the covenants during remainder of term.

Covenant by lessor to perform covenants during remainder of term.

CONSENTS.

No. CCCXIII.

Consent by a Mortgagor, a Tenant in Common, that the Mortgagee may produce the Title Deeds.

No. CCCXIII.

Mortgagor.

Obs. Where the title deeds to the entirety of the property is in the possession of the mortgagor, and are delivered over by him to the mortgagee, the latter, it appears, is not at liberty to produce such deeds, even to the co-tenant of the mortgagor, without his express consent, *Lambert v. Rogers*, 2 Mer. 489. See *Balls v. Margrave*, 3 Beav. 448; 4 Beav. 119; *Hercy v. Ferrers*, 4 Beav. 97.

And whereas it hath been agreed that the title deeds relating to the entirety of the said premises being in the custody of the

No. CCCXIII. said (*mortgagor*) shall be delivered over to the said (*mortgagee*) and that he shall be at liberty to produce the same in manner as hereinafter mentioned Now he the said (*mortgagor*) for himself his heirs executors administrators and assigns doth hereby consent and agree with and to the said (*mortgagee*) his heirs executors administrators and assigns that he and they shall and lawfully may from time to time and at all times when thereunto required by the person or persons who for the time being may be lawfully or equitably entitled to the other remaining moiety or half part [*or "other part or parts" as the case may be*] of the said premises produce and show forth or cause to be produced &c. to him her or them his her or their heirs appointees or assigns or any of them or to his &c. counsel attorney or solicitor the said title deeds or any of them relating to the same.



No. CCCXIV.

No. CCCXIV.

Purchaser. A Purchaser's Consent to deliver up an Agreement for the Sale of an Allotment of Common.

I the undersigned do hereby consent that the agreement bearing date &c. and entered into between me and A. B. of &c. shall be delivered up to the said A. B. to be cancelled And I hereby agree to rescind the same and do discharge the said A. B. from the performance thereof in all respects *As witness my hand*

(*Purchaser.*)



Consent by Protector of a Settlement, see post, DISENTAILING DEEDS.



No. CCCXV.

No. CCCXV.

Vendor. Consent by a Vendor that a Purchaser may retain Part of the Purchase Money.

And this Indenture further witnesseth and it is hereby declared and agreed and particularly the said (cestui que trusts) do

hereby consent and declare that the payment as well of the said principal sum of £ being the remaining part of the said purchase money as of the interest that shall become due in respect thereof shall not be required of the said (P.) during the life of the said A. B. by the said (*cestui que trusts*) or any of them or any of their executors administrators or assigns And also that the said sum of £ and interest shall continue and be in the hands of the said (P.) his executors administrators and assigns as a security to him and them and as a protection to the messuages and other hereditaments expressed to be hereby released against or from the (a) dower or thirds and all right and title of or to dower and all other claims and demands of her the said A. B. or of the said N. B. in her right And for that purpose that it shall and may be lawful for the said (P.) his heirs &c. by and out of the said sum of £ and the interest thereof to pay satisfy and reimburse himself and themselves all costs charges damages and expenses which he or they shall bear sustain or be put unto And all money and costs which shall be received and enforced from or out of the said messuages and other hereditaments expressed to be hereby released or any part thereof for or by reason or on account of the dower or thirds of the said A. B. or of any right interest claim or demand of her the said A. B. or the said N. B. in her right or for or by reason or on account of any action suit or other proceeding at law or in equity which shall or may be brought had commenced or prosecuted for establishing such dower or thirds or for enforcing and establishing such other right interest claim or demand as aforesaid or otherwise in relation thereto.

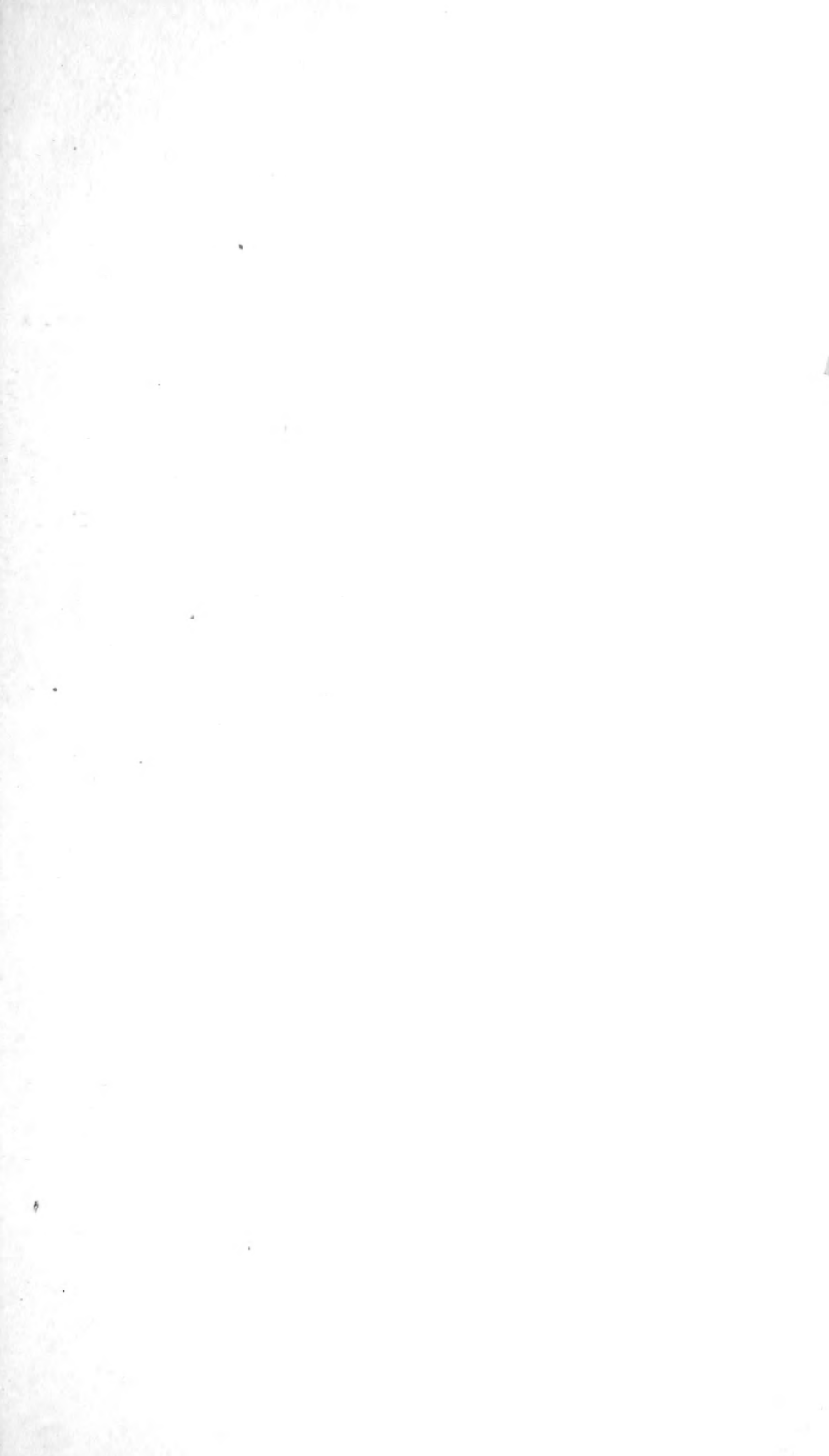
No. CCCXV.

Fendor.

CONVEYANCES, see *post*, DEEDS, DISENTAILING DEEDS, PURCHASE DEEDS.

(a) See *post*, DOWER.

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